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The "Certificate of Public Convenience"

Will it prove to be the entering wedge to a planned economic structure?

BY SAMUEL CROWTHER

MR. Justice Brandeis, in dissenting from the majority ruling of the Supreme Court of the United States in the case of New State Ice Co. *v.* Liebmann (285 U. S. 262, P.U.R.1932B, 433), wrote an opinion in which, at considerable length, he examined the business structure of today and squarely raised the question of the need for a better planned economy.

That exact question, of course, was not before the court, although the case did involve a broad public principle. The state of Oklahoma had enacted a statute which declared the making of ice to be a public utility in the technical sense, and, therefore, before anyone could engage in the business of ice making, he had to procure from the proper authorities what was called a "certificate of public convenience"—exactly as though he were setting up any of the services which are more usually classed as public utilities.

Liebmann, without making application for permission, put up an ice plant in a locality which was already fully served by an existing plant. The owners of this plant promptly sought an injunction against Liebmann. He contended that the manufacture of ice was a common calling and that the right to engage in a common calling is one of the fundamental liberties guaranteed by the due process clause of the

Constitution of the United States.

THE Supreme Court sustained his position, and Mr. Justice Brandeis in his dissent examined the case at length on its merits. But also he went somewhat afield to say:

> "Misery is widespread, in a time, not of scarcity, but of overabundance. The long-continued depression has brought unprecedented unemployment, a catastrophic fall in commodity prices, and a volume of economic losses which threatens our financial institutions. Some people believe that the existing conditions threaten even the stability of the capitalistic system.
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> "Economists are searching for the causes of this disorder and are reëxamining the bases of our industrial structure. Business men are seeking possible remedies. Most of them realize that failure to distribute widely the profits of industry has been a prime cause of our present plight. But, rightly or wrongly, many persons think that one of the major contributing causes has been unbridled competition. Increasingly, doubt is expressed whether it is economically wise, or morally right, that men should be permitted to add to the producing facilities of an industry which is already suffering from overcapacity.
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> "In justification of that doubt, men point to the excess capacity of our productive facilities resulting from their vast expansion without corresponding increase in the consumptive capacity of the people. They assert that through improved methods of manufacture, made possible by advances in science and invention and vast accumulation of capital, our industries had become capable of producing from 30 to 100 per cent more than was consumed even in days of vaunted prosperity, and that the present capacity will, for a long time, exceed the needs of business.
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> "All agree that irregularity in employment—the greatest of our evils—cannot be overcome unless production and consumption are more nearly balanced. Many insist there must be some form of economic control. There are plans for proration. There are many proposals for stabilization. And some thoughtful men of wide business experience insist that all projects for stabilization and proration must prove futile unless, in some way, the equivalent of the certificate of public convenience and necessity is made a prerequisite to embarking new capital in an industry in which the capacity already exceeds the production schedules."

LIEBMANN and his ice plant are of importance only as possibly deciding how far a state may go in bringing business under regulation by extending the meaning of the phrase "public utility." But the paragraphs given above from the opinion are of the highest importance because for the first time, at least in my knowledge, the Supreme Court of the United States has taken note of the theories of planned economy.

THERE is nothing at all new in the remarks. They simply restate the general thesis on which all planned economies are founded. But it is one thing to have the issue developed by an economist or even by a business man and something else again to have developed by a Justice of the Supreme Court in his official capacity.

For, if the proposals are sound and a start should be made toward putting them into effect, the result would be a fundamental revolution in the methods not only of American business but of American life, and the effects would be so far-reaching that no one could determine what eventually they might touch.

If, on the other hand, the proposals are unsound, the greater their currency the greater their danger.

But why discuss a dissenting opinion? Did not the judgment of the court forever dispose of the whole matter? Has it not been definitely held that the power of a state over private business cannot be extended beyond limits? Has not the law extended its strong right arm to bar further nonsense about economics?

That, indeed, is the legalistic approach to economics. And no approach could be so utterly destructive, for, while the law can interpret those

rules of conduct which are formulated through the slow processes of economic evolution, the law can do no more than bring on destructive revolution if it bars economic evolution. The Constitution of the United States is only an expression of individualism. As we progressed from or degenerated away from individualism—according to the point of view—the Constitution has been made to fit. It has not for long blocked any mass movement and has always been changed either by interpretation or amendment to suit the spirit of the times. The police power provisions have been taken far beyond even the imagination of the most extreme Federalists, while the slavery, income tax and liquor amendments have quite altered the original relation of the United States to its citizens.

If there should be a mass movement in favor of a planned and regulated society, it would be only a matter of time before the Constitution of the United States, instead of being a charter of individualism would be a charter for state socialism. Without any amendment, the Federal government has, through the Federal Reserve System, become the dictator of banking, while, through the Reconstruction Finance Corporation and the various emergency measures, it has become the greatest commercial banker. The loans which are today being made have in them the potential power to regulate all business. For a strong lender can always direct a weak borrower.

It is of only trivial moment that the Constitution prohibits a planned economy—if attempted in a certain fashion. If the people get the conviction that ours must be a planned economy, that is what we shall have. And there can be no more certain way of bringing this about than to dodge the merits of the economic argument and triumphantly trot out a court decision. That is the method by which revolutions are manufactured.

It will be noted that Mr. Justice Brandeis inquires rather than suggests but that he does not take into account the factor of the general price level as influenced by purely monetary phenomena. He traces everything to what amounts to the law of supply and demand. He believes that supply and demand can somehow be adjusted through some process approximating the judicial. The points that he makes are the familiar ones. They are:

(1) That unbridled competition is harmful.

(2) That it is antisocial to add to the producing capacity of an industry which is already suffering from overcapacity.

(3) That, owing to the large im-

¶ "It *is a commonplace to say that the curse of retailing is the small shop set up by a person without credit and without business training. Still, that is the way A. T. Stewart, Marshall Field, and John Wanamaker began. None of them could, under any circumstances, have received a certificate from any intelligent regulatory body.*"

provements in machinery and the like, industry is already so overequipped that it can produce anywhere from 30 to 100 per cent more than can be consumed even in the most abnormal times.

(4) That the striking of a balance between production and consumption is the only way out of unemployment.

(5) That hence something in the nature of a certificate of public convenience might well be investigated as a prerequisite to embarking in business.

THE certificate of public convenience is only a left-handed approach to a planned economy. The assumption that any board or court can really determine whether or not the establishing of any business unit will help or hurt a community seems, on the face of things, to be rather simple. If an electric power company has at considerable expense established itself in a section and is giving excellent service at a reasonable price, certainly the public will not be benefited by permitting another company to come in and duplicate the equipment. It is not wholly clear, however, that the consuming public in this case would be as much harmed as the investing public.

The case is not so clear if the company already in the field is miserably managed—although it may follow to the letter all the regulations laid down by various commissions. In such a case it would certainly benefit the consuming public and probably the investing public to have the inept company quickly put out of its misery by a competitor rather than be allowed to die a lingering death. The twilight zone is considerable and, although commissions have made endless rulings in cases of this sort, the evidence is far from clear that they have achieved even that fifty-fifty degree of rightness which is the most that can be expected of human judgment.

THE utility cases are, however, delightfully easy as compared with what might happen were certificates to be required in the ordinary course of business. Let us take for granted that every day sees some business unit established without any reasonable excuse. It is a commonplace to say that the curse of retailing is the small shop set up by a person without credit and without business training. Still, that is the way A. T. Stewart, Marshall Field, and John Wanamaker began. None of them could, under any circumstances, have received a certificate from any intelligent regulatory body.

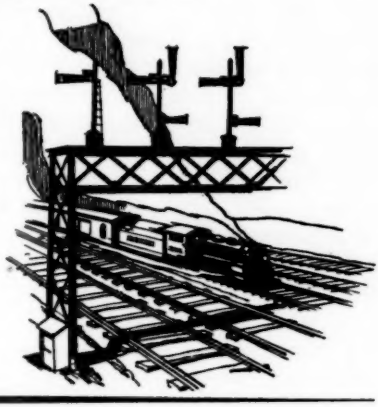
Or take a case more nearly in point. Through several years up to 1929, the investing public went daft on chain stores. Some of the chains were put together solely to support securities in much the same fashion as were many utility holding companies during the same period. It is quite certain that not all these chains were needed. It is equally certain that some of them were needed.

On what basis could the public's convenience have been determined?

Since the great expansion, both the old and the new chains have closed a considerable number of stores and other stores have changed their character. If a store could open only after formal investigation and permission, could it be permitted to close

The Danger That the Utilities Will Follow the Course of the Railroads and Be "Regulated to Death."

"THE Interstate Commerce Commission was expected to end all abuses. It did end many, but the fact remains that the railroads today are very weak sisters and the same government which regulated them has also had to rescue them. It is wholly within reason that the utility companies, having passed boom times, may find themselves being slowly improved and regulated to death."



at will—in case it were not bankrupt?

Or suppose a unit of merchandising or manufacturing did receive a certificate to engage in certain lines, what would be the situation if, in order to make enough profits to stay in business, it had to branch out into competitive lines? That is more than a hypothetical case. The drug stores have had to go into the very crowded restaurant business. Countless manufacturers have had to shift their products or take on new products. For instance, the Ford eight is simply the entry of a great company into an already crowded field. For there were already plenty of low-priced eights. If a commission were to decide that this new entry be permitted, would it not also have to decide what companies should quit making low-priced eights?

The intricacy of the controls that would be needed makes one dizzy. And it must be remembered that on the wisdom and completeness of these controls would hinge the whole working of the system. Or else we should easily be in a worse state at the end than in the beginning.

THAT is precisely what has happened to the railroads. They represent our largest experiment in economic planning. The Interstate Commerce Commission was erected to protect the interests of both the public and the railroads. Railroad history is not savory. The lines were built ahead of needs in most cases and too often at exorbitant prices. It would be interesting to discover exactly how much money has been lost in railroad securities. During the old days, rate wars were common and also they were violent. The railroads were quite largely in politics, and politics were quite largely in the railroads. It is not clear whether the roads corrupted the politicians or the politicians corrupted the railroads. The service was often high-handed. But

it is not of record that the roads which flagrantly disregarded service were also money makers. It was quite the reverse. The Interstate Commerce Commission was expected to end all abuses. It did end many, but the fact remains that the railroads today are very weak sisters and the same government which regulated them has also had to rescue them.

It is wholly within reason that the utility companies, having passed boom times, may find themselves being slowly improved and regulated to death.

THE members of the Interstate Commerce Commission and of the many state regulatory bodies are not lacking in intelligence. They are as competent as any human beings who could be appointed to industrial or general planning boards. And also they have had the benefit of what might be called institutional experience. They have not failed as regulators. They have failed because they have been asked to administer the principles of a socialized state in an individualistic state. They are asked to add two to two and get a result other than four.

The regulation of railroads and utilities is not on all fours with the regulation of industry. It is much simpler, although the same essential principles run through all undertakings for profit. That portion of the public which calls itself liberal and progressive has one set of delusions concerning the railroads and another concerning industry. The common delusion, which is also shared by many very conservative business men, is that competition can be regulated without regulating the competitors. The established concerns in any field are commonly for regulating what is pleasantly phrased as "destructive competition." They are all for caging the wild bulls but without realizing that they themselves must be caged lest they, too, go wild. The view of the evils of competition is largely determined by where one sits.

THE most common delusion, however, has to do with excess manufacturing capacity. The dogma is accepted that manufacturing proceeds in great waves and when the wave recedes the country is left on the beach of depression. If that were so, then merely regulating production to consumption would make everything lovely.

But how could any board determine the productive capacity of the country at any given moment?

Take the familiar case of the automobile industry. It is supposed to be a glaring example of overcapacity, and it is a good example, for the plants of the various companies are kept fairly up-to-date and there is no such gap between the worst and the best plants as in, say, the cotton textiles. But the very fact that the automobile plants are kept up-to-date destroys what is supposed to be excess capacity, for the machinery must quickly be scrapped for obsolescence. The scrapping is hastened by each new model. The Ford plants could not today turn out as many eight cylinder cars as they did Model T's a few years ago. The whole industry could not now, if it had the orders, equal the first six months' production of 1929. If the orders were in hand, the new machinery would soon be had

When Court Decisions Run Afoul of Economic Arguments

"IT is of only trivial moment that the Constitution prohibits a planned economy—if attempted in a certain fashion. If the people get the conviction that ours must be a planned economy, that is what we shall have. And there can be no more certain way of bringing this about than to dodge the merits of the economic argument and triumphantly trot out a court decision. That is the method by which revolutions are manufactured."

and production pounded through twenty-four hours a day. But if the orders were in hand, no production to meet those orders would be excess!

The truth is that never in industry is there for long a time when the absolutely first-class productive capacity is in excess of needs. There is always a margin of efficiency between the best and the crowd. There are always high cost producers who can earn money only on runaway markets and low cost producers who can make money almost regardless of general conditions. The steel trade is now in a position where any company with sufficient capital to erect wholly modern plants would take away a large share of the business. Indeed, it is now believed by many industrialists that manufacturing corporations should regard their plants not as fixed assets but merely as tools to be charged off and replaced within a much shorter period than is now even considered.

This, however, is one of the points which all the schemes for planned economy lightly pass over. The harm which may be done by insane competition is never weighed against the harm which might be done by keeping obsolete plants in existence. Suppose a backward industry were crowded—as all backward industries are. And suppose a concern with plenty of capital and a wholly new process applied for permission to operate. Would the commission shut out the new unit because the industry was crowded, or would it let in the new concern to wreck the old plants? Would not the interests of the public be better served by getting a cheaper product even at the cost of throwing the other companies—their employees and their stockholders—out of the running? Perhaps the new company would be admitted only if it sold its product at a price which the others could match or again it might be given an allotment of the total production. These very expedients have been tried in the German cartels. And they never worked. In the field of public utility service, everyone knows the harm that has been done by preserving obsolete outfits through political pres-

sure which barred all competitors.

THE balancing of production and consumption would not, of itself, solve the problem of unemployment. For first consumption must be determined and that, we now know, is largely a matter of the capacity to buy. It has been demonstrated that the depression-proof industry has yet to be invented. Bread is a necessity and probably the amount of bread actually eaten does not much vary, but the amount wasted does vary so much that the big bakeries have keenly felt the drop. It is likewise with other necessities, such as electric light, gas, and the telephone. On the other hand, given the means to buy, consumption is well-nigh limitless. The means to buy depends, under our system of economy, on the amount of money distributed in wages, profit, and interest. And also the general price level has now to be taken into account.

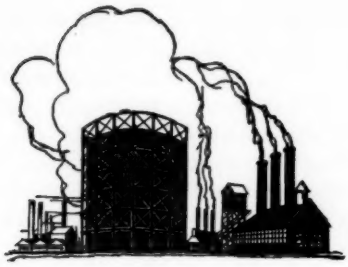
Of course, a nation could decide on a standard of living for its people and adjust its production to that. But always when that is tried, the production fails to meet even the minimum consumption. And I gather that those who propose plans have in mind the raising and not the lowering of living standards.

THERE are many things wrong with our economic system. They need study—we do not yet know what our economic system really is. But most certainly it has been demonstrated that regulating it on the most superficial knowledge—which is all that we have—has proved the surest way of aggravating instead of curing the disease. A planned economy, to judge by our attempts at planning, might well turn out to be a hopelessly messed up economy.

Fields in Which Uncle Sam Competes with His Taxpayers

REPRESENTATIVE *Shannon of Missouri reports that he has received complaints about government competition with private enterprises in the following specific cases:*

Artificial limb shops
Chemist and chemical engineers
Coal dealers
Cotton and wool
Druggists
Grain
Helium
Jewelry
Livestock
Paint and varnish manufacturers
Printers
Railroad and barge lines, etc.
Realty owners (competition offered through rental of Federal building)
Hotels, boarding houses and tourist camps
Map publishers and lithographers
Blankets
Leather
Tents and canvas goods
Banks (postal saving)
Clothiers and tailors
Coffee roasters
Dairies
Gasoline (tax-free)
Grocers
Insurance
Laundries and dry-cleaning plants
Musicians
Post exchanges (furnishing competition in practically every line of business)
Brick manufacturers
Shoe manufacturers
Restaurants and cafeterias
Nurseries
Medical profession (through free hospitalization in disability allowance cases for veterans, etc.)
Paper



Current Trends in Gas Regulation

PART I

What the commissions and the courts have decided during the past few months; orders and decisions of importance and significance to the gas companies and to their ratepayers.

BY ELLSWORTH NICHOLS

CONTROVERSIES over the substitution of charges for gas on the basis of heating quality instead of charges on the basis of the quantity of gas sold are perhaps the outstanding features of gas regulation in recent months.

The sale of fruit and eggs by the dozen has in many cases been superseded by the sale of these articles by the pound. People pay for what they get regardless of the size of a single article. So, in gas sales, the utilities now insist that what the public buys is heat units and that they should be billed accordingly.

Comparisons of rates are not given much weight in determining their reasonableness, but when a gas company seeks to increase its business, consumers themselves will compare rates and if they have the impression that the price of a new gas is more than the price of gas they have been receiving, or if they notice that their rate is higher than rates in other communities, this is a retarding factor in business development. To avoid such impressions is one of the purposes of the therm, or heat, basis for billing in place of cubic-foot measurement of gas. The companies now deal with natural gas of a certain number of B.T.U. or heat units per cubic foot, mixed gas with another number of B.T.U. per cubic foot, and manufactured gas with a third number of B.T.U. per cubic foot. Comparisons may, therefore, be misleading without an explanation of the qualification that there is a difference in heating value when rates are based on cubic-foot measurements. On the other hand, when the thermal basis is used,

all of these rates have a common denominator.

THE objection from the consumer's standpoint to the therm basis of charging has usually been placed upon the ground that he is unfamiliar with it, and it is difficult for him to check the accuracy of the bill presented for payment, since at present there is no gas meter which measures gas by heat units. The consuming public, as stated by Commissioner Brewster of the New York commission, suspects and resists any method of charging which it does not understand.

These points were stressed in a case before the New York commission in which it appeared that the Syracuse Lighting Company had entered into a contract for the purchase of natural gas to be mixed with artificial gas, and that with the new gas it would raise the heating content from 537 B.T.U. to 875 B.T.U. The existing rate for residential use was $1.15 per thousand cubic feet, whereas the proposed rate would be $1.66 per thousand cubic feet for the first block, exclusive of an initial charge. The company contended that it would take an appreciable length of time to regain its present revenue status, but it hoped to do this by increased volume of sales for industrial and house-heating purposes. Residential sales, it was thought, could be increased by stimulating the use of gas for water heating and other household purposes. In order to do this the company wanted to overcome sales resistance based upon the psychological effect of higher rates per cubic foot but actually lower rates per heating unit —the unit with which the purchaser of gas is most vitally concerned.

The commission authorized the change to the thermal basis, but it was remarked that the therm basis of charging was not universal in the state of New York and, therefore, the contention in regard to direct comparison of rates did not at the time have so much weight. The commission, in approving the schedule, required that the charges be expressed in both cubic feet and therms, and that the company set forth on the face of the bill the last meter reading, the present meter reading, the number of cubic feet consumed, the number of therms consumed, and the amount of the bill. On the back of the bill it was required that the schedule should be set forth under which the charge was made, expressed in both cubic feet and therms. There was also to be a statement on the back of the bill calling attention to the fact that the heat content of the gas had been increased from 537 B.T.U. to 875 B.T.U.[1]

THE Illinois commission is also considering this question. Pending the final disposition of an application by a gas utility for a change in heating standards so as to permit it to serve mixed gas which resulted from the introduction of a natural gas supply, and for authority to make a corresponding reduction in rates, the commission permitted the reduced rates to be placed into effect so as to give the public the immediate benefit of the difference. A proposed revision in the heating standards of the service from 530 B.T.U. to 800

[1] *Re* Syracuse Lighting Co. (N. Y.) P.U.R. 1932D, 285. See also *Re* Binghamton Gas Works (N. Y.) P.U.R.1932D, 16.

B.T.U. was held not to be in the public interest except as accompanied by a substantial reduction in rates where the company's rates were based upon the cost of heat units. The new rates were constructed on the therm basis.[2]

A gas company in Missouri was not permitted to adopt the therm basis for billing as the only rate on account of three particular objections; namely, confusion in the minds of the users, absence of practical thermal meters, and the failure of a general agreement in the industry upon the definition of a therm.[3]

THE Indiana commission has disapproved gas rates on a therm basis. Last year some of the companies under the control of this commission were authorized to adopt the therm basis. The commission then began to receive complaints from various cities and towns and an extensive investigation of the subject was undertaken. The commission concluded that consumers generally did not understand the therm basis and that it was generally unsatisfactory to the gas patrons. The chief of the tariff department of the commission testified that in his opinion the best rate schedule is the one that is simplest and most easily understood by all concerned. He thought that this basis was not conducive to satisfactory public relations for the gas utilities, and that such a situation is disadvantageous to the utilities themselves. The result was that the commission canceled rate schedules on the therm basis and ordered the utilities to bill on the cubic-foot basis. An optional feature which was prevalent in Indiana was said to result in the shifting of the burden of seeking a reasonable rate from the utility to the consumer.[4]

Commissioner Brewster of the New York commission in the Syracuse Lighting Company Case referred to the Indiana action with the statement that none of the companies having a therm rate basis of charging in Indiana served a high heat content gas, but that the Indiana commission had indicated that if such a high heat content gas were served, the decision might have been different.[5]

WHY do not utility rates decline in company with falling commodity prices?

This is one of the questions constantly raised in utility rate cases. The Alabama commission, among others, has answered the question.

[2] *Re* Peoples Gas Light & Coke Co. (Ill.) P.U.R.1931E, 457. See also *Re* Calumet Pub. Service Co. (Ill. 1931) P.U.R.1932A, 159.

[3] *Re* Laclede Gas Light Co. (Mo.) P.U.R. 1932E, 49.

[4] *Re* Gas Rates on the Therm Basis (Ind. 1931) P.U.R.1932A, 113.

[5] *Re* Syracuse Lighting Co. *supra.*

¶ "IF *the utilities have not been permitted to earn more than a fair return during prosperous times, this fact must be given due consideration when the commission deals with their rates and their rate of return during periods of general business depression.*"

Under commission regulation utilities are prevented from charging more for their service than will provide a reasonable return on the fair value of their property devoted to the public use. On the other hand, unregulated industrial and commercial enterprises are free to charge for their products all that can be obtained during prosperous times. The regulation of rates is exercised to the end that rates at all times be maintained at a reasonable level. With the utilities unregulated, as is true of private enterprises, if they were free during prosperous times to fix rates without regulatory control, then they could with justice perhaps be subjected to the price fluctuation suffered by private business during economic depressions. If, however, they have not been permitted to earn more than a fair return during prosperous times, this fact must be given due consideration when the commission deals with their rates and their rate of return during periods of general business depression.

Another point is pertinent in this connection: Utility rates, even during the high price period, have been in most instances below the level of 1913, which has been taken as the norm for comparison of prices generally. In the particular case before the Alabama commission, it was shown that the index on domestic gas equalled 80 per cent as compared to the "cost of living" index of 150. In other words, while the prices of other commodities increased during prosperous years and have recently decreased, they are still above the 1913 standard, while utility prices are below the 1913 standard.

The point has also been made that index figures showing reductions in prices generally during recent months do not necessarily indicate a decrease in the expenses of the gas utility.[6]

A GAS rate when established may be valid but it may become invalid in a later year or possibly in occasional later years if it turns out to be in fact confiscatory in those later periods. But this does not mean that an ordinance fixing gas rates, unconstitutional and invalid when passed, could become binding in a later year because during that year the rate of actual return increased. With these points in mind the Federal circuit court of appeals remanded for further consideration a suit to restrain an ordinance which fixed gas rates in the city of Columbus, Ohio. It was said that the record should contain testimony and findings as to the proper rate base and the actual return during each year of the 3-year period while a fund established for reimbursement had been accumulated.[7]

In Indiana the electric companies have been striving (thus far without success) to obtain approval of rate making on a system-wide basis rather than a segregated locality basis.[8] The same question has been raised in a recent gas rate proceeding where the Northern Indiana Public Service Company was denied authority to fix rates on a system-wide basis. The commission held that it had no authority, under the state laws, to consider any division of the state other

[6] Smith *v.* Birmingham Gas Co. (Ala.) P.U.R.1932B, 241.

[7] Columbus Gas & Fuel Co. *v.* Columbus (1931) 55 F. (2d) 56, P.U.R.1932B, 4.

[8] Wabash Valley Electric Co. *v.* Singleton (U. S. Dist. Ct.) P.U.R.1932B, 225.

The Customer Resents a Gas Bill Which He Does Not Understand

"THE objection from the consumer's standpoint to the therm basis of charging has usually been placed upon the ground that he is unfamiliar with it, and it is difficult for him to check the accuracy of the bill presented for payment, since at present there is no gas meter which measures gas by heat units. The consuming public . . . suspects and resists any method of charging which it does not understand."

than a municipality as a unit for purposes of fixing rates.[9]

THE Missouri Supreme Court, in reviewing an order of the commission, disposed of several controversial matters on public utility valuation and rate making. The commission in finding a rate base stated that it was endeavoring to fix a value that would hold for a reasonable period in the immediate future. Rulings by the United States Supreme Court, it was said, authorize the consideration of that factor in determining value. The commission had failed to forecast the price of cast-iron pipe correctly. Nevertheless the court ruled that this did not invalidate the commission's conclusions.

Depreciation requirements of the company were also considered and the court ruled that a depreciation reserve should be sufficient not only for maintenance and repairs but also to equal the necessary depreciation by wear not overcome by repairs or replacements, although it should not be allowed to pile up beyond the necessary requirements for efficient management.

Property not used was ruled out of the rate base. It was declared that the abandonment of property which is never replaced but is superseded by another instrumentality, as gas lamps by electric lights, is an extraordinary retirement and its loss is one of the hazards of a gas utility's enterprise and should be deducted from the utility's property account and not paid for in any way by the consumers. Furthermore, it was said that because such abandonment is such a hazard it should not be considered for the purpose of determining annual depreciation reserve. The court held also that the commission should reconsider the inclusion in the rate base of the

[9] Logansport *v.* Northern Indiana Pub. Service Co. (Ind.) P.U.R.1932D, 10. See also Bloomington *v.* Public Service Co. (Ind. 1931) P.U.R.1932A, 177.

value of land lying idle for more than three years with no apparent prospect of use.[10]

THE Georgia commission is authority for the proposition that appraisals of public utility plants should not be on a theoretical or fictitious basis. Evidence introduced by the city of Atlanta as to the value of gas property, which consisted of estimates of the value of a theoretical plant capable of serving adequately the territory served by the utility was rejected as being calculated upon a fictitious basis. The commission also declined to avail itself of evidence, adduced by the city, which consisted of testimony of an alleged expert witness who upon his own admission was not experienced with actual property construction or appraisal work.

The commission denied the company's application for a rate increase although the utility was shown to be suffering from a prolonged economic depression. A sufficient time had not elapsed, in the opinion of the commission, to give a true picture of the effect on the company's business incidental to a change from manufactured to natural gas, and the company had not shown financial difficulties calling for an emergency rate. Incidentally the commission disapproved a payment of 3 per cent of gross earnings to a parent concern as a management fee.[11]

THE impression that the hands of state regulatory commissions are tied when a public utility, subject to regulation, makes payments to companies which are not subject to regulation has been rapidly dissipated by recent decisions. These decisions strike at the root of the argument for Federal control of interstate companies which are not public utilities subject to state regulation. One of the landmarks was the Illinois Bell Telephone Company Case.[12] The principles announced there have now been applied by the Federal Supreme Court to gas utilities. A gas distributing company in Kansas applied to the commission for an increase in rates. It was shown that a very large part of the company's expenses were incurred in the purchase of gas from an interstate affiliated company over which the commission had no jurisdiction. The commission refused to raise the rates without a showing that the cost of purchasing the gas wholesale was reasonable. Objection was made by the company that the commission had no power over the rates of the wholesale company. The lower Federal court and the Supreme Court both sustained the position of the commission.

It was conceded that the state commission had no jurisdiction over rates of the wholesale company, but it was held that this did not preclude the commission from determining whether the price paid by a public utility should be allowed as a reasonable operating expense, particularly since the companies were under common control.

The company contended additionally that it had made a *prima facie*

[10] State ex rel. St. Louis *v.* Public Service Commission (1931) (Mo. Sup. Ct.) P.U.R. 1932A, 305.

[11] *Re* Atlanta Gas Light Co. (Ga.) P.U.R. 1931E, 461.

[12] Smith *v.* Illinois Bell Teleph. Co. (1930) 282 U. S. 133, 75 L. ed. 255, P.U.R.1931A, 1.

showing as to the reasonableness of its supply contract by showing that the gate rate for natural gas had been found reasonable in the case of other distributing utilities. This contention was overruled since the city being supplied with gas by this utility was not a party to the other proceeding. Moreover, it was ruled that assertions by the distributing utility that the wholesale price was the lowest that it could obtain from the wholesale company, or from any other available source of supply, were meaningless in view of the intercorporate control exercised over the two companies. Negotiations for a lower rate were not made at arm's length.[13]

THE demand or capacity charge is now universally recognized in the construction of electric rates, and with the development of house heating by gas this same charge is becoming an important feature in gas rate schedules. Complaint was made by a customer, in a case before the Alabama commission, that the demand charge, which was based on required radiation, should be done away with and the total charge for gas-heating service should be based on the thousands of cubic feet of gas consumed.

The commission did not agree with this view but said that in order to render good service the utility must install facilities of sufficient size to meet the demands placed on it at all times. It requires more burner capacity of the furnace to heat the larger house than the small house, and, consequently, a larger investment by the utility to serve. Therefore, there is a group of costs which vary directly with the capacity required to render the service. The amount of radiation for any particular house on the basis of square feet of required radiation was approved, and the charge based on such radiation was held to be a proper demand charge. It was said that the radiation charge is a capacity charge intended to cause the owner of a large house with a large furnace designed to heat such house to carry the cost of his own service rather than impose that burden or a part thereof on the householder who requires less capacity for service to be maintained by the utility.[14]

[13] Western Distributing Co. *v.* Kansas Pub. Service Commission, 285 U. S. 119, 76 L. ed. 655, P.U.R.1932B, 236. See also Columbus Gas & Fuel Co. *v.* Columbus (1931) 55 F. (2d) 56, P.U.R.1932B, 4; *Re* Cities Service Gas Co. (Mo.) P.U.R.1931E, 11 (distributing companies held to be mere agents of producers).

[14] Smith *v.* Birmingham Gas Co. (Ala.) P.U.R.1932B, 241. As to block rates and 3-part rates, see *Re* Republic Light, Heat & Power Co. (N. Y. 1931) P.U.R.1932B, 512; Webb City *v.* Webb City & C. Gas Co. (Mo. 1931) P.U.R.1932A, 378; *Re* Cheyenne Light, Fuel & Power Co. (Wyo. 1931) P.U.R.1932A, 136.

¶ "PROPERTY *not used was ruled out of the rate base. It was declared that the abandonment of property which is never replaced but is superseded by another instrumentality, as gas lamps by electric lights, is an extraordinary retirement and its loss is one of the hazards of a gas utility's enterprise and should be deducted from the utility's property account and not paid for in any way by the consumers.*"

A STATUTORY prohibition against a service charge in New York state has been frequently injected into cases involving various kinds of gas rate structures, but it seems to be well settled now that the prohibition is not to be extended by implication to rates which are not actually service charges. Thus it was held by the supreme court that a graduated or block scale of rates for gas service was proper and that an initial block of 73 cents for the first 100 cubic feet of gas used did not violate the law. The view was expressed that the prohibition applied only to the making of a charge where there is no consumption of gas or a charge for mere readiness to serve. Thus if any gas at all is consumed under the lowest block, there is no service charge at all, in the statutory sense.[15]

A Massachusetts law which provides generally for the filing of gas rates requires, among other conditions, that certain rates shall be computed upon the consumption of gas as registered by meters unless the department orders otherwise. This has been held by the highest court of the state not to prevent a gas company from including a service charge as an element in its rate schedule by and with the consent of the utility department.[16]

MUNICIPALITIES, in their opposition to public utility rates, recognize the fact that in unity there is strength. The method by which they may unite for concerted action, however, depends on the local law and city charters. This was brought out in a suit by a taxpayer to secure an injunction to restrain the city of Atlanta from making an appropriation to the Municipal Utilities Rate Association. A resolution had been passed by the Atlanta general council contributing $1,500 to the association to be used by the association in the employment of experts on gas rates for the purpose of appearing before the public service commission to contest the application of the Atlanta Gaslight Company for approval of a new rate schedule. The injunction was denied by the lower court but the supreme court held that the injunction should have been granted, as there was no provision in the charter of the city or any law authorizing it to make such an expenditure.[17]

[15] McCormick *v.* Westchester Lighting Co., 141 Misc. 261, P.U.R.1931E, 6.

[16] Grant *v.* Department of Pub. Utilities, P.U.R.1932E, 54, 180 N. E. 504.

[17] Stuart *v.* Atlanta, 174 Ga. 587, P.U.R. 1932C, 124.

The second and concluding instalment of this article will appear in a coming issue of this magazine

The Revolt against Radicalism

HAS *the depression of the past three years revealed the inadequacies of economic panaceas and nostrums and turned the people toward conservative doctrines? Or has the experience inclined the public to experiment with new plans and policies? In view of the coming elections, these queries—propounded and answered by* LOTHROP STODDARD *in the coming issue of this magazine—have a timely import.*

Eight Proposals for the Regulation of the Electric Utilities

(An excerpt from the address of Governor Franklin D. Roosevelt at Portland, Oregon, on September 21, 1932)

I seek to protect both the consumer and investor. To that end I propose and advocate the following remedies on the part of the government for the regulation and control of public utilities engaged in the power business and companies and corporations relating thereto:

1. Full publicity as to all capital issues of stocks, bonds, and other securities; liabilities and indebtedness, capital investment; and frequent information as to gross and net earnings.

2. Publicity on ownership of stocks and bonds and other securities, including the stock and other interests of all officers and directors.

3. Publicity with respect to all intercompany contracts and services and interchange of power.

4. Regulation and control of holding companies by Federal Power Commission and the same publicity with regard to such holding companies as provided for the operating companies.

5. Coöperation of the Federal Power Commission with public utilities commissions of the several states, obtaining information and data pertaining to the regulation and control of such public utilities.

6. Regulation and control of the issue of stocks and bonds and other securities on the principle of prudent investment only.

7. Abolishing by law the reproduction-cost theory for rate making and establishing in place of it the actual money, prudent-investment principle as the basis for rate making.

8. Legislation making it a crime to publish or circulate false or deceptive matter relating to public utilities.

Franklin D. Roosevelt

The "Reasonableness" of Rates

Some fallacies about "fairness" that are refuted by facts

Unless omens fail, the current presidential campaign will be enlivened by occasional references to the "power issue." The familiar charges that commission regulation has broken down and that some of the utility companies are making extortionate profits will be revived by those office-seekers who are urging their election because of their advocacy of government ownership and operation of power projects. The following article, which embodies authoritative facts and specific references to commission and court decisions, may serve as a check upon political utterances that are prompted by mere political expediency.

By HENRY C. SPURR

If the politicians and theorists are right when they say the electrical industry is picking the pockets of the people by extortionate charges for electric service, there must be something seriously the matter with commission regulation—because it is the job of the commissions to see to it that the companies charge reasonable rates. That would be a very natural conclusion. It is ordinary, everyday horse sense.

On the other hand, if the commissions are right when they say they have fixed reasonable rates, there must be something the matter with the politicians and the theorists when they declare that rates are extortionate. That is also ordinary, everyday horse sense.

The commissions and the politicians or theorists cannot both be right. Consequently, whom are we to believe? Whom does the presumption favor?

The commissions, with the assistance of staffs of experienced engineers and accountants in the pay of the state, have made numerous investigations of the most minute business details of individual electric companies all over the country.

The politicians have done nothing of the kind. Neither have the theorists.

Which of these groups, then, ought to be best informed about the reasonableness of electric rates?

Common sense should teach the average man that the commissions are more apt to be right than the politicians or the theorists.

But presumptions, however strong, are rebuttable. Let us, therefore, give the politicians and the theorists the benefit of that possibility. Let us see what sort of facts the commissions have had before them upon which they have based their conclusions as

to the reasonableness of rates. We shall then have something more than a presumption to go upon. We shall not be led astray by the mere assumption that electrical rates are extortionate or by plausible theoretical reasoning as to the profits of the electrical industry as a whole.

There are two methods by which the reasonableness of rates or charges may be tested. One is the value of the service or commodity to the person who receives or buys it. The other is the cost of manufacture and sale of the service or article purchased.

Let us say that the price of a pair of shoe strings is 10 cents. We do not use many of them. If we think they are not worth that much to us we do not have to buy them. We can tie our shoes with twine or some other makeshift. We say the price is cheap enough measured by the value of the article to us. But if we could learn how much it costs to manufacture and sell shoe strings, we might find that, based on this cost, the price is too high.

Perhaps a good pair of shoe strings could be sold for 9 cents, or even for 8 cents, instead of 10 cents. Possibly the shoe-string manufacturers are making too much money. If so, we could say the price of shoe strings is more than it should be although they are cheap enough when we consider their value to us.

It is the same with electric service. Considering the value of the service, the rates of electric companies have not been too high; otherwise, the business would not have grown to the enormous size it has. No business can possibly succeed in a large way on the basis of extortionate rates, especially where it must displace competitors as the electric business has had to do. Let the domestic consumer of electricity divide his monthly bill by 30 in order to ascertain what the service costs him a day. The average householder will find that his bill is less than 10 cents a day. Considering the value of the service to him, this is amazingly cheap—probably one of the cheapest of his household expenses. Based on what it costs the company to deliver that service to him, however, it may still be too high although the company may be putting $2 in the pockets of the people for every dollar it is taking out.

REASONABLENESS of electric rates, however, are determined under commission regulation, not by the value of the service but by the cost of rendering it.

If the rates were only half of what they now are, they would still be regarded as too high if the companies were making an unreasonable profit, although the value of the service to the customers would be just as much as it now is. So, the average daily cost of electric service to domestic consumers, although no more than the price of a pair of shoe strings, may still be looked upon as exorbitant if the company is making an unreasonable profit for a regulated monopoly.

That is why the politicians and the theorists keep talking about the excessive return or profits of the electrical companies. The theorists are careful not to be too specific, but politicians, less wary than their advisors, have asserted that these profits

run as high as "from 100 to 3,000 per cent." If that is so, then electric rates measured by the cost of the service are extortionate no matter how cheap that service may be as compared with its value.

As it is the policy of regulation to have electric service rendered at reasonable cost, it is the business of the commissions to find out just how much money the various companies are making. The companies must be allowed a fair profit, but no more than that. Let us see what the facts were in various cases which moved the commissions to render their rate decisions. We shall then know how much the companies were earning at the time of the investigations and how much they were thereafter allowed to make if they could. We can thus compare these figures with the extravagant claims of the politicians and the very general and sweeping conclusion of the theorists. Take a few typical cases in which electric rates were for the most part found to be too high.

In a California case in which rates were reduced the commission said:

> "In this case, as in the past, we will use the historical cost of the property or the reasonable investment as the basis of rates rather than the so-called 'present value' which, it may be noted in passing, is a hypothetical cost rather than a true value."

The commission fixed the rate base at $1,650,380. On an 8 per cent return the revenue required from customers for operating expenses and return was $462,600. The estimated revenue from existing rates was $527,000, an excess of $64,400, or a return in the neighborhood of 12 per cent.[1]

In another case before the same commission, the company claimed a rate base of $160,669. The commission allowed $101,121.18. The commission again called attention to the fact that it used as the rate base its estimate of the reasonable investment. On this the commission found that the net amount available for return was $12,720, or about 12 per cent. The commission held 8 per cent to be reasonable.[2]

In still another electric rate case, the commission's finding of value was $109,723,695 which was very close to the estimated actual cost of the property without any allowance for going value. The net estimated income available for depreciation and return for 1922 was found to be about 12 per cent. The commission allowed a return of 8 per cent which was declared

[1] *Re* Coast Valleys Gas & E. Co. (Cal. 1923) P.U.R.1924C, 40.
[2] *Re* Napa Valley Electric Co. (Cal. 1924) P.U.R.1925A, 724.

¶ "If *the politicians and theorists are right when they say the electrical industry is picking the pockets of the people by extortionate charges for electric service, there must be something seriously the matter with commission regulation. . . . On the other hand, if the Commissions are right when they say they have fixed reasonable rates, there must be something the matter with the politicians.*"

to be equivalent to 7.6 per cent after the payment of its income tax.[3]

On a rate base ranging from $9,982,377.01 in 1916 to $28,589,086.25 in 1921, another California company earned in 1916, 8.65 per cent return; in 1917, 8.24 per cent; in 1918, 6.72 per cent; 1919, 5.43 per cent; in 1920, 9.81, and in 1921, 9.35 per cent. The commission held that the company was entitled to an 8 per cent return, as it appeared that the actual cost of borrowed money was more than 7 per cent.[4]

Reductions in rates were ordered in a case in which the company claimed a rate base of $111,899,158, but in which the commission allowed only $103,237.631. Upon this base the company was found to be earning a return of 9.65 per cent.[5]

HERE is a case which throws an interesting sidelight on the extravagant claims of politicians and theorists as to extortionate profits of the utility companies sanctioned by the commissions. The company's rate base representing the reasonable investment was fixed at $94,075,000. Upon this, in view of the high cost of money, a return of 8.3 per cent was allowed. There was nothing to indicate that the company was earning an excessive return. The commission said that it was the second largest company in California, and then added:

> "The situation affecting electric utilities in California has been critical for the past three years."

This was an application by the company for an increase in rates. If it had been earning like 100 per cent or 3,000 on its investment, it would have been the height of folly for it to ask the commission to investigate its condition because an investigation would have shown such a profit as would have instantly resulted in a reduction in rates. The commission's statement that electrical industries of California had been in a critical condition for three years pretty conclusively disposes of the charge that the companies are and have uniformly been operating at an extortionate profit. If they had not been operating at a low margin of profit, in California for example, they would hardly have found themselves in a critical condition for a period of three years. To say that they were not so is to hold that the California commission is unworthy of belief; but that would be as foolish as it would be for a man lost in the woods not to trust his compass.[6]

IN a Connecticut case the rate base fixed by the commission was $235,000, an estimate of the present value. The commission found that the actual cost or book value was $184,051. The commission allowed a return of only 5 per cent because it appeared that the company had made excessive profits, had made dividends on common stock ranging from 10 to 30 per cent, and had financed constructions out of excessive profits, and had, although setting aside a high annual depreciation allowance, financed capital replacements out of current operat-

[3] *Re* Pacific Gas & E. Co. (Cal. 1922) P.U.R.1923C, 385.
[4] *Re* San Joaquin Light & P. Corp. (Cal.) P.U.R.1922D, 595.
[5] *Re* Southern California Edison Co. (Cal. 1923) P.U.R.1924C, 1.
[6] *Re* Southern California Edison Co. (Cal.) P.U.R.1921D, 65.

The "Reasonableness" of Rates Is an Individual Company Problem

"THE reasonableness of electric or other utility rates cannot be determined en masse by theoretical reasoning applicable to the entire industry in all places and at all times; the reasonableness of the rates is an individual company matter and must continue to be so as long as operating conditions, financial problems, nature of the territory served, and density of population differ."

ing expenses. Based on the actual cost of the property, the return allowed would be approximately .064 per cent.[7]

On hearing a complaint that rates of an Illinois electric company were excessive, the company's inventory placed the value of the plant at $458,519. The commission's engineers estimated it at $362,431. The commission fixed the rate base at $350,000, or $108,519 less than the amount claimed by the company. On this basis the company was found to be earning a little over 11 per cent. The commission ordered a rate reduction to produce a return of 7¼ per cent. There was no allowance for going value.[8]

IN reducing the rates of an electric company, the Indiana commission found that the original cost of the company's property was $5,400,000; the cost of reproduction new $6,004,076; the cost of reproduction less depreciation, $4,843,898. The value for rate-making purposes was found to be $5,250,000. A return of 7 per cent was allowed. What the company was earning does not appear from the report but the commission said that an examination of the records kept by the company and its predecessors disclosed large earnings.[9]

HERE is a group of Massachusetts cases. The profits disclosed by commission investigation were evidently not on the total investment in the property but on the investment by stockholders; in other words, the profits upon the stockholders' equity in the property.

In an early case the rates of an electric company were ordered reduced. The commission said that the dividends for two years had not been paid but since then dividends had never been less than 6 per cent, and that during the previous six years

[7] *Re* Clinton Electric Light & P. Co. (Conn.) P.U.R.1931E, 196.
[8] Belleville *v.* St. Clair County Gas & E. Co. (Ill. 1915) P.U.R.1916B, 24.
[9] Peck *v.* Indianapolis Light & Heat Co. (Ind. 1915) P.UR.1916B, 445.

have been 12, 9, 21½, 11, 11½, and 12 per cent.[10]

In reducing maximum rates for electricity from 7 to 5 cents, the commission in another case pointed to large profits which had been made by the company on its actual investment. The capital stock of the company at the time of the investigation was $2,400,000. From time to time new stock had been issued at premiums above par, and the total amount of these premiums was $1,658,232. These new issues of stock have been, with several inconsequential exceptions, subscribed for by the stockholders of record. The total amount paid into the treasury of the company by the stockholders was $4,058,232. Throughout its history the company had paid substantial dividends. In the six years prior to the investigation it had paid, after setting aside during this period $2,041,698.39 for depreciation reserve and $779,123.72 for surplus, the following dividends upon its capital stock:

"1921	12%	1924	22%
1922	20%	1925	23%
1923	20%	1926	46%

"Calculated upon the basis of the actual return paid to the stockholders upon their total investment of par and premiums, these dividends would amount to the following:

"1921	7.0%	1924	13.0%
1922	11.8%	1925	13.6%
1923	11.8%	1926	27.2%"

The company has built up a surplus out of earnings which at the time of the investigation was $1,536,175.[11]

IN the Cambridge Electric Light Company Case in which electric rates were reduced, the commission said:

"The company was organized in 1886, and its then capital stock of $200,000 was fully paid in 1889. Its present capital stock is $1,560,000. From time to time new stock has been issued at premiums above par and the total amount of these premiums is $778,000, making the total amount of money paid into the treasury of the company by the stockholders $2,338,000. There are no outstanding bonds.

"The company has been very prosperous. Since 1891 dividends have been paid every year. From 1891 to 1906 the dividends were never less than 6 per cent on par and, excepting the years 1901 to 1904, they were never less than 6 per cent on par and premium. Since 1906, the dividend rate has at no time been less than 10 per cent on par and has ranged from 10 per cent to 28 per cent on par and from 7.35 per cent to 20.65 per cent on par and premium. In the last five years, for which the company has filed reports (1922 to 1926, inclusive) it has paid out, after setting aside during this period $620,000 for depreciation reserve and $916,817.92 for surplus, the following dividends upon its capital stock:

	Amount	*Per cent on par*	*Per cent on par and premium*
1922	$225,000	18	12.03
1923	265,200	18	11.34
1924	312,000	20	13.34
1925	327,600	21	14.01
1926	374,400	24	16.01
Total ..	$1,504,200		

"Thus the company has actually paid out in dividends during this 5-year period an amount practically equal to its total outstanding stock, while at the same time it increased its surplus by more than $900,000." [12]

These percentages of dividends must not be confused with percentages of return upon the investment in the entire property. They do show, however, that on suggested theories of rate making most unfavorable to the companies, percentages of profits have at no time been anything like the extravagant claims of the politicians. It must be remembered also that the rates in these cases were or-

[10] *Re* Milford Electric Petitions (Mass.) P.U.R.1915B, 577.

[11] Customers *v.* Worcester Electric Light Co. (Mass.) P.U.R.1927C, 705.

[12] P.U.R.1928C, 24.

dered reduced by the commission.

In a Missouri case the total investment in an electric plant was found to be $40,819.79. The commission said the reasonable income to take care of return and an allowance for surplus contingencies and depreciation would be 13 per cent on a rate base of $40,000. This including operating expenses would amount to $14,800 a year. The company actually received in 1913, $16,223.89, which exceeded the reasonable income by $1,400 in round numbers. This, the commission held, justified a small reduction of approximately 9 per cent in the income and in the rates.[13]

In another case the ratepayers claimed the value of the company's property was $51,000. The company claimed that it was $85,383.03. The commission allowed a rate base of $58,000. The net profit of the company from electric operations for 1914 was $6,155.08, or a little over 10 per cent. The commission allowed the company a 7½ per cent return stating that money in the section of the state occupied by the company commanded 8 per cent interest.[14]

In a case in which the Missouri commission made an investigation of the rates of an electric company on its own motion, there was a valuation of the property by the commission's engineers and by others. The rate base was fixed at $7,200,000 for the combined properties of the company including all elements of value, although there was no specific allowance for going value. This was less than the commission found the original cost of the property to be. The company was allowed a return of only 6½ per cent. There is nothing in the case to indicate what the company was earning on its existing rates but it was probably not earning an excessive return because there is nothing said about that in the case and modification of the company's rate schedule seems to have been merely for the purpose of eliminating certain discriminations existing between different classes of customers.[15]

In another case on a cost of reproduction basis, taking a 5-year average of prices without any allowance for intangibles, the company was found to be earning a return of 4.64 per cent. This rate base was fixed on a valuation made by the commission's engineer. Although the percentage of return was low, the commission refused to allow an increase in rates demanded by the company. This was because the company was found to have made average earnings for five years of 9.15 per cent. The probability is that this rate base was

[13] Meek *v.* Consumers Electric Light & P. Co. (Mo.) P.U.R.1915A, 956.

[14] Commercial Club *v.* Missouri Pub. Utilities Co. (Mo.) P.U.R.1915C, 1017.

[15] *Re* Kansas City Electric Light Co. (Mo.) P.U.R.1917C, 728.

¶ *"If courts and commissions could be abolished, and if rates should be reduced on the scale that the politicians and the theorists say is possible, no company, however well managed, could possibly survive. The public would suffer as much as the companies from the adoption of such a policy."*

pretty close to actual cost or prudent investment. It will be seen that this rate base could have been cut by more than 45 per cent and still have produced no more than an 8 per cent return.[16]

In a New York electric case there was a valuation of the company's property. The cost less depreciation arrived at by the commission's engineer was $20,595,000. The sum of $100,000 was allowed for organization expense and $1,000,000 for working capital which brought the total up to $21,700,000. The rate base was fixed at $22,000,000. Nothing was allowed for going value. No speculative allowances were made for overheads. There is no opportunity in this case for charging an inflated valuation. The company was limited to a return of 7 per cent on the rate base. This would allow it to take care of an interest charge of 5 per cent on its bonded indebtedness to pay 8 per cent dividend on its stock and have available for surplus and contingencies $110,000. The commission found that on the actual amount of capital contributed by the security holders in money or in property and devoted by the companies of the system to electrical operation, the total dividends and interest paid had averaged approximately 9 per cent per annum. This return was held excessive.[17]

In another case in which a complaint as to excessive electric rates was sustained, the cost new of the company's property was found to be $1,360,454. This was the depreciated cost of the property including working capital and organization expense of $25,000. It was found that the company was earning 14 per cent on this, a return which was held to be excessive.[18]

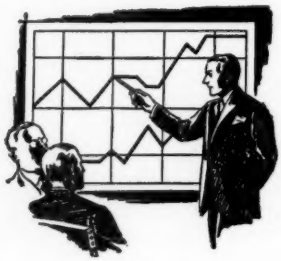
But in another case in which a complaint against increased electric rates was dismissed, the rate base as an irreducible minimum was found to be $1,714,575.61. It was held that a return amounting to 6.88 per cent or 5.27 per cent if certain allowances for amortization were included could not be considered unreasonably high.[19]

Based upon the engineer's findings as to the prudent investment in the property which was fixed at $93,599 without any allowance for going value, the North Dakota commission found, after an adjustment of operating expenses and revenues in one case, that there was available for depreciation and an 8 per cent return on the investment $18,448.03. With an allowance of 4 per cent upon depreciable property and an 8 per cent return, the company would be entitled to earn $16,770. As the company was getting $18,448, the commission held that the rates should be reduced.[20]

In an Oregon case electric rates were reduced where, on a rate base of $1,047,500, the company was found to be earning a return of about 12 per cent. This rate base was taken as the value less accrued depreciation, the value being less than the estimated cost of the plant.[21]

[16] *Re* St. Joseph R. Light, Heat & P. Co. (Mo. 1919) P.U.R.1920A, 542.
[17] Moritz *v.* Edison Electric Illuminating Co. (N. Y. 1st Dist. 1916) P.U.R.1917A, 364.
[18] Maires *v.* Flatbush Gas Co. (N. Y. 1st Dist. 1918) P.U.R.1920E, 930.
[19] Nyack *v.* Rockland Light & P. Co. (N. Y. 2nd Dist. 1919) P.U.R.1920A, 754.
[20] Barth *v.* Hughes & Deiters Electric Co. (N. D. 1921) P.U.R.1922A, 740.

If Rates Were One Half What They Are, They Might Still Be Unreasonably High



"If the rates were only half of what they now are, they would still be regarded as too high if the companies were making an unreasonable profit, although the value of the service to the customers would be just as much as it now is. So, the average daily cost of electric service to domestic consumers, although no more than the price of a pair of shoe strings, may still be looked upon as exorbitant if the company is making an unreasonable profit for a regulated monopoly."

In the case of a small electrical company a complaint against an unjust increase in rates was sustained by the Pennsylvania commission. It appeared that the property cost the owner $13,161.29. The property had been improved. The owner claimed a present value of $34,011. The commission fixed a value of $8,500, which was probably less than the prudent investment. To make a 7 per cent return on this rate base a net income of $6,906.66 would be required. It was shown that in 1916 the company had made $6,076.08, and in 1917, $6,677.35.[22]

In an early Washington case the commission found the rates of an electric company to be exorbitant. The original cost of the plant was $78,000; reproduction cost, $56,372. The rate base fixed by the commission was $60,000 and on this basis the company was found to be earning nearly 14 per cent. On the original cost basis the earning was a little over 10 per cent.[23]

In one case the Wisconsin commission ordered an electric company to put a revised schedule of rates into effect. On the cost new of the property the commission found that the company had available for both depreciation and interest 15.3 per cent in 1911, 15.8 per cent in 1912, and 19.4 per cent in 1913.[24]

In another case a reduction was ordered where on a rate base closely approximating the actual cost of the company's property, it was found to be making a return of about 13 per cent.[25]

In another case rates were ordered reduced where the company was found to be earning a return of about 12 per cent, 8 per cent being declared reasonable. The value was found on

[21] La Grande Commercial Club *v.* Eastern Oregon Light & P. Co. (Or.) P.U.R.1915D, 909.

[22] Rose *v.* Mercersburg L. & M. Electric Co. (Pa.) P.U.R.1919F, 714.

[23] Public Service Commission ex rel. Hendrie *v.* Everett Gas Co. (Wash.) P.U.R. 1915C, 418.

[24] *Re* Ladysmith Lighting Co. (Wis.) P.U.R.1915A, 1050.

[25] Croty *v.* Tomah Electric & Teleph. Co. (Wis. 1916) P.U.R.1917A, 439.

the split-inventory basis since declared by the courts to be unfair to the companies and illegal. The commission in this case said:

> "In pricing the various items of property, our engineers used the so-called 'split inventory' basis. This method of determining property value consists in applying pre-war normal prices to property installed before the war and investment cost on all property installed since. This method is in accordance with the established policy of the commission and is used in preference to the present cost of reproduction basis as being fairer in the long run to both the company and the consumers." [26]

In another case based on the book value of the company's property, which was $26,650, an amount the commission held reasonable, the company's requirements to cover operating expenses, taxes, and a reasonable return was $12,196.03. The actual income was $13,511.35, or an excessive revenue of about $1,300.[27]

THE cases to which reference has been made are only part of those in which electric rates were ordered reduced because the companies were held to have been making an excessive return. Some of the cases cited were small, some large. The investigations included some early cases. But these illustrations are typical and were selected with a view of avoiding all possibility of quibbling about valuation.

In many cases, to which space will not permit reference, the earnings were calculated on a fair present value of the properties. The politicians and theorists would have the people believe that these values were estimated entirely on the reproduction cost basis at inflated prices and that inflated intangible values were added. This, however, is not so.

In most instances the rate base would be found to be pretty close to original or prudent cost, and if something more than that were allowed, in obedience to the Supreme Court's ruling that utilities are entitled to a return on the present value of their property rather than its cost, a lesser amount of return would be held reasonable than would probably have been allowed on a smaller rate base.

THE savings to the public by these rate reductions have aggregated millions of dollars; but the returns of some of the companies, while excessive as compared with a 7 or 8 per cent allowance deemed reasonable for a regulated monopoly, were not excessive as compared with other business enterprises, and were nothing approaching the profits which the politicians and the theorists would have the people believe the companies are making in spite of commission regulation.

It must not be forgotten that in the investigations in which the return or profit was found excessive the commissions reduced it and limited the companies to a return of from 6 to 8 per cent on rate bases which very closely reflected the actual investment in the property, rather than its reproduction cost at highest prices. But the politicians and theorists ignore that fact.

An examination of the cases ought to convince the reader that the reasonableness of electric or other utility rates cannot be determined *en masse* by theoretical reasoning applicable to the entire industry in all places and at

[26] Tomahawk *v.* Tomahawk Light, Teleph. & Improv. Co. (Wis. 1921) P.U.R.1922A, 259.
[27] *Re* Cuba City (Wis.) P.U.R.1927E 434.

all times; that the reasonableness of the rates is an individual company matter and must continue to be so as long as operating conditions, financial problems, nature of territory served, and density of population differ.

Numerous exhaustive investigations by commissions have shown that some companies have prospered and some have not; that some were making just about as much money as they should; that some were making too much, and some too little.

To permit the companies to make a reasonable profit but no more, as the commissions do after a full investigation of company business, is undoubtedly the best policy from the standpoint of the public welfare.

If courts and commissions could be abolished, and if rates should be reduced on the scale that the politicians and the theorists say is possible, no company, however well managed, could possibly survive. The public would suffer as much as the companies from the adoption of such a policy.

Odd Items about the Utilities

TAXICAB rates are regulated in at least 21 cities in the United States.

* *

THERE were 35,336,437 telephones in the world on January 1, 1932.

* *

OF the world's telephone companies, 67.1 per cent are privately owned and 32.9 per cent are government owned.

* *

THE highest telephone on the North American continent is located atop Pike's Peak, Colorado, 14,109 feet above sea level.

* *

TRUCKS and busses paid $293,000,000 in taxes in 1931—more than 28½ per cent of collections from all motor vehicles in the United States.

* *

EMMA M. NUTT, probably the first "hello girl" of history, entered the service of the telephone company in Boston, September 1, 1878.

* *

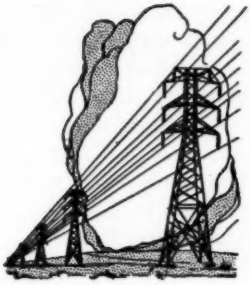
There are more than 700,000 American Telephone and Telegraph Company stockholders, and no one person owns as much as one per cent of the stock.

* *

THE world's "slowest railroad train" is reported in Australia, where the "tea and sugar special" makes a 1,051-mile run from Port Augusta in a week.

* *

THE eclipse of the sun on the afternoon of August 31st caused a tremendous demand for electric light; in New York city (where the eclipse was only partial), the electrical power consumption jumped to nearly 40 times normal.



Is there a Saturation Point for Utility Mergers?

Decentralization of the public service industry as an alternative to a system of Federal regulation

By LEE G. LAUCK

THERE has been a great deal of activity in the formation of mergers; the whole country now appears to be under the influence of the idea that the day of the small business man has passed, and that corporate power is inevitable in the evolution of human society.

The most significant feature of the recent movement (that is to say since the World War), is the piecemeal process of expansion which is being accomplished. It is merely the influence of new forces and, in some part probably, the recognition of old mistakes. The public has come to look upon this gradual process of amalgamation largely as a matter of course, and the distrust and suspicion with which they were greeted upon their first appearance have to a considerable extent subsided.

GENERALLY speaking, the primary task of industrial mergers in the past was to achieve economies in production and increase the scale of output to meet the demands of an expanding market; today mergers are influenced with the problem of narrowing markets and the requirements of a greatly intensified competition in the national and even international market. They have been most numerous in the public utility field, in retail and wholesale distribution, in motion pictures and amusements, and in the baking and financial activities.

In manufacturing, where the iron, steel, machinery, and foodstuffs groups have shown most merger activity since the war, consolidations have usually tended to proceed in a more gradual way than was true several decades ago, collateral or allied products being brought into the fold as the advantages of more widely diversified activity became apparent and as the possibility of centralized marketing activities was realized.

IN the past two or three years, however, a new enormous giant has been known to spring up over night. We read of newer and bigger mergers in railroads, banks, power corporations, and mercantile concerns, many of which are apparently destroying individual initiative and building up giant corporations. Several years ago Congress was busy passing laws like the Clayton and Sherman Acts to protect the weak against the strong. Today the public has learned to smile indulgently at the old socialistic thunder about trusts and the agitators who still hammer on the tom-toms about monopoly and oppression. The monopoly scare has dwindled. The antitrust laws seem null and void. The Department of Justice has established the policy of extending an audience to mergerites and indicating whether it would permit consolidations to be effected without going into the courts to unscramble the mergers after they have been done. This new policy has merit, for it has supplied industry with plenty of confidence to carry out unifications, knowing that the government would not come along and wreck the economic edifice with the resultant loss to honest investors.

AS a result the country is literally infested with mergers in the greatest era of consolidation it has ever experienced.

Developments in the utility group during 1929 and 1930 were probably the most exceptional. In that field no other period witnessed merger operations of the same size. A record was established from the point of size of organizations involved, for the consolidations represented the broadest ever conceived. In fact, consolidations have gone so far in the power industry that it would appear they are undoubtedly already in conflict with the antitrust laws. Existing tendencies there are moving toward unification, the idea of those in charge being to secure the highest degree of consolidation and monopoly control, and to work out to the greatest possible extent an inflated financial structure for absorbing future earnings, before being compelled to submit Federal regulation.

Their chief and underlying purpose is to gather together, under unified control, local plants for the generation of electrical energy or gas, the product of which is to be sold irrespective of state lines for manufacturing and other power purposes in large industrial areas. One combination already controls practically all the existing facilities of generation in New York state as well as the important industrial areas of Pennsylvania and New Jersey. Its acknowledged object is to extend similar ownership and control over the entire Atlantic Seaboard and ultimately to dominate the national situation. Still another group or combination overshadows all others in the Mississippi valley and is rapidly extending its control to the south and east. A third group or combination practically controls the situation on the Pacific Coast.

Existing tendencies are toward further amalgamation and centralization of control, and disinterested authorities publicly predict that ultimately the generation of electric light and power and gas and its distribution will pass under one national, centralized control.

¶ "THE *ever-rising tide of mergers and consolidations gives proof of the necessity for the adoption of a constructive plan, even an emergency measure, for the stabilization of domestic industry and trade, under government auspices—leaving the highest practical measure of self-government to industry, but providing for ultimate governmental supervision in arriving at production programs and price schedules.*"

WITH these objectives practically secured it would appear that the power and utility combinations expect by the legal fiction of separate and independent corporate entities to show that they are only incidentally engaged in interstate commerce, and to disprove in reality what they are—large monopolistic combinations, primarily engaged in interstate commerce in restraint of trade and violative of existing antitrust legislation.

At the same time the public smiles indulgently. The monopoly scare has dwindled.

IN spite of the fact that the formation of many such industrial consolidations is no longer necessarily regarded as forces of evil, it does not follow that they are to be accepted entirely as unequivocal forces of good, although the soothing passage of time has revealed that the public is more willing than before to study their merits and defects with open minds as questions of fact rather than of theory. At the outset they were heralded as promising exceptional profits, a substantial part of which in many instances accrued to the promoters, but the belief was general that even after this generous treatment of those who organized the combinations, they still held out prospects of large returns to investors.

The prospect of high profits, however alluring to the would-be investor, was not looked upon with equanimity by the public in general. It was feared that such profits could only be gained through the control of prices to the detriment of the consumer, and the mere promise of such profits was looked upon as equivalent to a frank proposal to mulct the public. Present-day promoters of consolidations have allayed this popular apprehension by insisting that the merits of such organizations rest in the fact that they promote economies of operation, provide a more efficient form of management, and stabilize industry, and that the natural reward of such effects is increased returns to security holders without injury to the public at large.

THE first exponents of what the popular phrase designates as "big business" were the railways. It was through them that the corporate entity has become a distinct part of our national life, and its transfer to other fields of economic life was a natural consequence. In the present-day formation of combinations of one sort or another, railway history has offered a rich storehouse of examples and methods of every conceivable sort

by which such ends could be accomplished.

Therefore, when considering the contribution of the railways to the development of the large-scale enterprise, it is not difficult to conceive that economic pressure has already brought about the actual unification of 25 per cent of the railway mileage of the country. One fourth has already been consolidated.

If the application for consolidation recently submitted to the Interstate Commerce Commission for the four-system plan in the trunk-line territory is found to be a logical, well-considered scheme for welding those transportation facilities into efficient systems, appropriately designed to preserve competition, adequately serve business, and give each of the proposed new roads a chance to earn its own way, a new era of prosperity will soon culminate. It has been demonstrated that the country cannot prosper when the railroads are starving.

WHILE all these important consolidations in the public service field have been taking place, the public has assumed an attitude of quiescence. It has been taught along with reputable business leaders that wasteful competition must give away to unification of industries, all of which will take time. Nevertheless, there are stormy days ahead, particularly until some well-established policies are worked out, as is evidenced by the fact that Congress is being urged to give the power combinations the option of voluntarily submitting to a sound and complete system of Federal regulation or otherwise order the Department of Justice to institute judicial proceedings leading to their dissolution. In that case there would be no alternative to the "power trust" but to submit to Federal regulation, for the refusal to do so would inevitably lead to the destruction of their entire corporate structure with incalculable losses to the industry and to thousands of investors who hold its stocks and bonds.

The ever-rising tide of mergers and consolidations gives proof of the necessity for the adoption of a constructive plan, even an emergency measure, for the stabilization of domestic industry and trade, under government auspices—leaving the highest practical measure of self-government to industry, but providing for ultimate governmental supervision in arriving at production programs and price schedules. This has already been conceded by many of our foremost leaders in industry and finance, and was strongly recommended in a recent report of the United States Chamber of Commerce on Continuity in Industry.

Five Needs of Regulation

AN OPEN LETTER TO PUBLIC UTILITY EXECUTIVES

*IN the coming issue of this magazine—out October 27th—*DR. ELIOT JONES, *professor of economics at Stanford University and an economist of national repute, will set forth his views "as a friendly external critic of utility regulation" of the five major steps that should be taken to make more effective the tasks of the state and Federal regulatory commissions—the five outstanding needs as revealed during the past three fateful years of economic depression and of trial.*

OUT OF THE MAIL BAG

A Square Deal for Both Sides in Regulatory Controversies

PLEASE accept my compliments on a very fine publication in PUBLIC UTILITIES FORTNIGHTLY, both as to subject matter and typographical make-up. We appreciate the spirit of fair play and the sportsmanship shown in publishing "the other side."

—FRANK H. COPP,
Seattle, Washington.

The Effect of the 3 Per Cent Tax Bill on the Utilities

IN my opinion, the tax of 3 per cent on gas and electricity, as finally passed by Congress and signed by the President, will have no effect whatever on the industry. The tax will be paid by the consumer, and I assume will be set out as a separate item on his bill so that each time a consumer of gas or electricity pays a bill for such service he will note the exact amount of the government toll. Although in most cases small, it will be a constant irritant, and the more it irritates the sooner it will be repealed. If the tax had been imposed on the companies direct, it would have been to a large extent concealed and perhaps would have remained in effect indefinitely.

My opinion is that Congress, in its dealing with the entire tax bill, has given a discouraging exhibition to the country. In all my observation of congressional action extending over a period of almost forty years, I have never seen such a display of incompetence, indecision, ineptness, lack of leadership and arrant cowardliness. The best that can be said for the tax bill performance is that Congress has drawn a bill, which the President has approved and which will call forth a constant protest from the taxpayers. They will feel the additional taxes every way they turn and in a manner which will be particularly annoying. I think that is as it should be, because the more obnoxious these special taxes are the sooner they will be removed. However, that was not the purpose of Congress in imposing them. It seems to me that there were few Senators or Representatives who did not apply the principle of "safety first" to their attitude on this measure and who were not more concerned with their own future political prospects than they were with the welfare of the country.

—HAROLD E. WEST,
Chairman, Maryland Public Service Commission

What to Do With Earnings "Above the Fair Rate of Return"

IN my article on "Our Inflexible Rate of Return" in the issue of July 7th of the PUBLIC UTILITIES FORTNIGHTLY I made the statement:

> "When earnings are above the fair return, the carriers should be required to reserve the excess and to invest it in such a way as to make it available for interest and dividend requirements when earnings are low."

Mr. Woodruff, railroad commissioner of Iowa, has written me to ask how the excess would be invested to make sure that it would be available for interest and dividend requirements when the necessity arose.

This pertinent question deserves careful and extensive consideration.

What should be done with reserves, made during periods of prosperity for later periods of stress, is a problem which is arousing considerable discussion. The difficulty which has given rise to the discussion obviously grows from the fact that reserves may turn out to be nothing more than bookkeeping entries; when this is the case, little or no good is derived from the reserves, since they are merely tied up with other assets. In such cases there would be additional "frozen" assets and possibly added overexpansion. It is obvious that something must be done to overcome this if there is to be any way of acquiring reserve strength in advance.

IN order to acquire reserve strength in advance, the first essential is adequate earn-

ings. I have stressed the need of change in our regulatory policy if this is to be accomplished. The second essential is to follow a policy of conservatism during times of prosperity. This means that business executives must be conservative (but not reactionary) in all their business policies, and, in regard to the issue in question, it means that dividend policies must be conservative too.

The executives of our railroads and public utilities should endeavor to establish rates of dividends which are no higher than necessary to attract capital, and which can be maintained at a reasonably constant figure. It is still possible to find examples of concerns which are doing this in spite of the prolonged depression; incidentally, the securities of these concerns rate among the best to be obtained in this country. It should be noted that neither of the above requirements were recognized in the United States in the late period of prosperity, in prevailing practice nor in regulatory policy.

When the above conditions have been met the third essential is that excess earnings be *available* in the period of depression. Not only must reserves be made but they must be ear-marked for the purpose for which they are set up. In other words cash must be obtainable when required. There seems to be a number of ways in which this can be accomplished and a given concern would probably find it advantageous to use many different devices.

In the first place, exceedingly liberal cash reserves should be maintained. This is costly but sound practice would dictate that periods of prosperity bear the cost of subsequent depression. This in itself would serve to check, partially at least, the peaks of prosperity. Banks would have to maintain liquidity in order to meet the immediate withdrawal of large sums, but with the Federal Reserve System we are not suffering from lack of ready cash.

In the second place, United States government bonds, and for that matter certain other high grade bonds, can be used as a source of investment for surplus cash. This would not necessarily mean the dumping of large amounts of bonds which would lead to the demoralization of the market, for they would be sold only as the cash was needed. At present such bonds as the above are readily saleable and at a good price.

In the third place, excess earnings could well be used to maintain a very high current ratio. Current liabilities should not be allowed to pile up when times are good. If current liabilities were kept down in good times concerns would not have to use up their supply of ready cash during times of stringency in meeting current obligations. On the contrary, the borrowing capacity of concerns would be increased in proportion to their liquidity and there would be little objection to borrowing under such circumstances.

Finally, a concern could buy its own bonds. The advantage of this procedure to a corporation would be in improving its financial standing and thereby lowering its fixed charges—an embarrassing matter just now. It is safe to say that few railroads in the United States would be financially embarrassed at present were it not for the absurd bonded structure which characterizes most of them.

The point I wish to emphasize is the supreme importance of liquidity during periods of prosperity. A truly successful program of advance preparation involves, of course, much more than this. For instance, provision should be made for depreciation reserves in prosperity which could be used during depression. Many other examples of advance preparation of a similar nature could be given.

—D. F. Pegrum,
University of California.

Some of the Objections to the Railroads in 1829

The farmers would be ruined.

Insanity among man and beast would increase.

No railroad train could make progress against a heavy wind.

Hens would lay no eggs on account of the noise of the trains.

Horses would have to be killed because they would be rendered wholly useless.

There would be no market for oats or hay, as the horses would become obsolete.

There would be constant forest and prairie fires, caused by sparks from the engines.

The costs of construction of railroad tracks would bankrupt the state and the public.

What Others Think

Is Governor Roosevelt Swinging to the Right?

GOVERNOR Roosevelt's campaign speech at Portland, Oregon, on September 21st on the subject of public utilities contains little that is new or startling. The main points, which are well summarized by the governor himself, and appear on page 439 of this issue of PUBLIC UTILITIES FORTNIGHTLY, are also a fair summary of the governor's well-known position on utility regulation. One significant feature about the speech as a whole is that there seems to be some evidence that the governor is swerving more and more to the right. Take, for example, the following passage:

> "State-owned or Federal-owned power sites can and should properly be developed by government itself. When so developed, private capital should be given the first opportunity to transmit and distribute the power on the basis of the best service and the lowest rates to give a reasonable profit only."

Compare this with his message to the New York legislature on January 19, 1931, wherein he urged that the legislature should give a proposed St. Lawrence power development commission authority not only to build the generating plant, but the transmission lines as well. Of course, this duplicate set of state-owned lines paralleling those of a private company would only be a big club, but the governor said in his message:

> "I believe that these alternatives form the very foundation of the plan which will have its ultimate attainment only when the homes of the states get cheap electricity. I believe that these two alternatives provide the whip hand, the trump card, with which the state can treat with the power trust, and I believe that they should be emphasized to the utmost."

As a matter of fact, the governor's message in 1931 all but approved of the minority report of the St. Lawrence Power Development Commission (issued January 19, 1931). This minority report favored outright marketing and distribution of St. Lawrence power by the state.

In Portland, Governor Roosevelt said a kind word for the theory of commission regulation:

> "For more than two centuries, the protection of the public was through legislative action, but with the growth of the use of public utilities of all kinds, a more convenient, direct, and scientific method had to be adopted—a method which you and I now know as control and regulation by public service or public utility commissions.
>
> "Let me make it clear that I have no objection to the method of control through a public service commission. It is, in fact, a proper way for the people themselves to protect their interests."

He went on to point out how a few commissions, including the former New York commission, departed from the straight and narrow path. His tone is kindly and sympathetic like a fond father deploring the errors of a wilful child. But in 1931 there was a sterner Governor Roosevelt. He told the New York legislature (January 20, 1931):

> "Hitherto we have relied wholly on public service commission regulation of rates. We all know the long story of how court decisions, valuations, rate bases, complicated accountings, newly invented methods of finance, and unsatisfactory leadership in the public service commission itself have made impossible the fulfilment of the original purposes of regulation.
>
> "Something new had to be done. I said to the legislature in 1929:
>
> "'That is why, in trying to treat this whole problem of development, transmission, and distribution of St. Lawrence power as a complete picture in the interests of the people of the state, I have sought a method by which we could avoid the rate-regulating powers of the public service commission, tied up, as it is, at the present time by Federal court rulings.'"

SOMEHOW or other, taking the speech as a whole, a close follower of the governor is, therefore, likely to get a distinct impression that the Roosevelt who would go to Washington is slightly more conservative than the Roosevelt who went to Albany. To change one's opinions, of course, is a personal prerogative and, under proper circumstances, may be highly commendable.

The most amusing feature of Roosevelt's Portland speech is relatively unimportant, but it certainly is a joke on the governor who has been so careful in the past to create the impression of being a cultured, profound, and generally well-informed gentleman. His flawless English and casual references to such works as Chesterton's essays have done much to further this impression. And so we listened with interest to the following discourse on the birth of utility regulation in England:

> "Let us go back to the beginning of the subject. What is a public utility? Let me take you back 300 years to old King James of England. The reign of this king is remembered for many great events. Two of them in particular. He gave us a great translation of the Bible and through his Lord Chancellor, a great statement of public policy. It was in the days when Shakespeare was writing 'Hamlet' and when the English were settling Jamestown, when a public outcry arose in England from travelers who sought to cross the deeper streams and rivers by means of ferry boats. Obviously these ferries, which were needed to connect the highway on one side with the highway on the other, were limited to specific points. They were, therefore, monopolistic in their nature. The ferry boat operators, because of the privileged position which they held, had the chance to charge whatever the traffic would bear, and bad service and high rates had the effect of forcing much trade and travel into long detours or to the dangers of attempting to ford the streams.
>
> "The greed and avarice of some of these ferry boat owners was made known by an outraged people to the King, and he invited his great judge, Lord Hale, to advise him.
>
> "The old law lord replied that the ferrymen's business was quite different from other businesses; that the ferry business was, in fact, vested with a public character; that to charge excessive rates was to set up obstacles to public use, and that the rendering of good service was a necessary and public responsibility. 'Every ferry,' said Lord Hale, 'ought to be under a public regulation, to wit, that it give attendance at due time, keep a boat in due order, and take but reasonable toll.'
>
> "In those simple words, my friends, Lord Hale laid down a standard which, in the ordinary, at least, has been the definition of common law with respect to the authority of government over public utilities from that day to this."

A PRETTY picture this! The Portland voters must have fondly envisioned this dialogue between the earnest and (presumably) pious King James and the grizzled old jurist. Unfortunately historical fact is otherwise—Lord Hale was not admitted to the bar until 1637, twelve years after the death of King James in 1625, at which time Lord Hale was a lad of sixteen. Of course, King James may possibly have sought advice on this subject from the fifteen or sixteen-year-old Lord Hale, but authorities do not bear out the supposition.

The passage concerning ferry regulation which Governor Roosevelt cited was, indeed, from the mind of the great Lord Hale but it was revealed to us in a legal treatise "De Jure Maris" published after his own death in 1676. It can be found on page 6 of the first volume of Hargrave's Legal Tracts. Incidentally Lord Hale was never a "Lord Chancellor," that post being occupied by Lord Clarendon during most of Lord Hale's active life. Lord Hale was, however, Chief Justice under Charles II after having been a minor judge under Cromwell. Finaliy, Lord Hale never laid down the rules for regulating ferries and neither did King James. Ferries were first regulated by a statute passed in 1555 (Stat. 2 and 3, Philip and Mary). All of which would indicate that the governor might tickle up his research staff or else confine his remarks to this side of the Atlantic before the voters begin to wonder if he knows any more about government than he does about—well—Lord Hale for instance.

—F. X. W.

ADDRESS OF GOVERNOR FRANKLIN D. ROOSEVELT. Portland, Oregon. September 21, 1932.

The Immediate Reactions of the Press to Roosevelt's Views on Power Regulation

THERE are two definite reactions noted in the press to Governor Roosevelt's speech on utilities at Portland: (1) that he is becoming more conservative and is trying to prove that he is a "safe" man for the benefit of the Eastern voters; (2) that he is as "radical" or (according to one's view of such matters) as "progressive" as ever. If the Democratic press took the first view and the Republican press took the second, one might easily regard both conclusions as the respective alignments of a clean-cut partisan issue to be settled at the polls by the people for better or worse. But in a campaign full of surprises and baffling complications—in a campaign which witnesses Maine going Democratic and Wisconsin throwing out the La Follette machine within a fortnight—there comes as an added complication the fact that Democratic, Republican, and really independent journals are all disagreeing among themselves as to whether Governor Roosevelt is turning conservative or growing more red or remaining a modest blushing pink.

LET us examine the Republican side of the card. The New York *Herald-Tribune*, a leader in the field of Republican journalism, finds that the governor is swerving to the right. An editorial of September 23rd states in part:

> "Facing the question of government operation, the governor makes a strategic retreat that leaves him in a less strong position. Having moved over toward the conservative side in the present campaign, he was obliged to praise the efficiency of private operation at the expense of public operation. But for the sake of his western friends of the Norris stripe, he was equally obliged to retain government operation as a stick in the cupboard with which to beat recalcitrant companies which refused to be good."

But an "independent" Republican neighbor, The New York *Sun*, thinks differently. In an editorial on the same day, there occurs the following passage:

> "However much Governor Roosevelt protests that he is a friend of private management of the distribution of electric power, his Portland speech confirms what already had become apparent from his attitude toward the proposed St. Lawrence development at Massena Point. The governor believes in public ownership of power sites and public development of hydroelectric power; he says he favors private distribution on terms satisfactory to the state, but state distribution if those terms cannot be obtained. He also favors keeping a rod in pickle with which to punish private operators who might find it uneconomical to distribute power on terms a state administration might consider satisfactory."

Moving down to Philadelphia, we find that the *Public Ledger* shares the editorial views of the *Herald-Tribune* as shown in the following statement:

> "Although in his Portland speech on the 'power' question Governor Roosevelt repeated his familiar advocacy of government ownership, both Federal and state, he manifested the same solicitude for conservative Eastern opinion that has marked most of his campaign utterances to date. Only on prohibition, on which Mr. Hoover has taken an equally advanced stand, thereby removing this question as a direct issue between the presidential candidates, has Mr. Roosevelt spoken out without attempting to qualify his position."

Moving still further down the Atlantic seaboard, we find that ardent advocate of the Hoover administration, The *Washington Post*, accusing Governor Roosevelt of poaching on Norman Thomas' preserves:

> "In two respects Governor Roosevelt greatly weakened the effect of his address. The most important was his virtual espousal of the principle of public operation of utilities. He did not go quite as far as the Socialist candidate for President, but he gave that Socialist good ground for claiming that the Democratic candidate is leaning toward Socialism."

The second "weakness" mentioned by the *Post* editorial had to do with Governor Roosevelt's "promise" to the Portland voters that the Columbia river

project "must be the next great hydro-electric development to be undertaken by the Federal government." The *Post* wonders what the governor will tell the Tennessee voters who are equally interested in the Cove Creek development. So much for the Republican press.

Now let us turn to the Democratic press. The Baltimore *Sun* editorially arrives at the novel position that it is "conservative" public opinion that has shifted towards Roosevelt rather than Roosevelt who has shifted toward the conservatives. Just how this modern Mohammed-and-the-mountain miracle has been accomplished is described as follows:

> "The result is that when Governor Roosevelt restates his views of a few years ago on the power question, he appears to many to have shifted toward the Right. The controlling fact is, of course, that economic forces have greatly shifted the utility scene. Governor Roosevelt has clung to ground taken before the shift.
>
> "How the shift works to temper Governor Roosevelt's views with conservatism is perhaps best illustrated by his insistence upon 'abolishing by law the reproduction cost theory of rate making and establishing in place of it the actual money prudent-investment principle as the basis of rate making.' Four years ago advocacy of such a step would have been treated by spokesmen and lawyers for the power companies as anathema. Then, with prices at a high level, they insisted on and won from the Supreme Court of the United States the right to base the valuation of their properties for rate-making purposes on what it would cost to produce the properties at prevailing prices. That was usually far higher than the initial cost. But since then prices have dropped precipitately, with the result that a valuation of many utility plants, based on what was prudently invested in them, would be higher than a valuation based upon what it would cost to reproduce them at this time."

Well, anyhow, whether Roosevelt has become more conservative or the conservatives more Rooseveltian, the net result is that, in the opinion of the Baltimore *Sun*, the governor stands nearer to the heart of the industrial East than he has heretofore. Such is the view of that great independent Democratic journal, the New York *Times*, voiced editorially as follows:

> "For the benefit of any who did not know that Governor Roosevelt is opposed to government ownership and operation of the common run of electric public utilities, he has made his position clear. 'I state to you categorically,' he told his Portland audience, 'that as a broad general rule the development of utilities should remain, with certain exceptions, a function for private initiative and private capital.' No conservative can object to that. Even the exceptions that he notes will be widely approved, up to a point. Hundreds of American communities, dissatisfied with existing service, have embarked, for better or for worse, on the seas of public ownership."

The editorial goes on to prove that the governor's position is not greatly out of line with the position taken by the more "enlightened conservatives" such as Mr. Young. The editorial views with suspicion, however, any proposal to commit the government definitely to the power distribution business. It chides the governor for blaming "excessive rates" on overcapitalization—a regulatory fallacy which, it says, even Professor Ripley declares to be exploded. It concludes by accusing Roosevelt of being unfair in his charge that President Hoover has opposed an extension of Federal control and generally leaves the impression that its support of the governor in this campaign is not overenthusiastic.

Mr. D. W. Ellsworth, writing in *The Annalist*, a favorable analysis of the governor's Portland speech, says:

> "The political outlook, the shadow of which inevitably hangs over business in an election year in a period of depression, appears to have improved visibly with Governor Roosevelt's speech on the utility situation. It becomes increasingly difficult for those with outright 'radical' views to find encouragement and comfort in Mr. Roosevelt's utterances, and the views expressed in his speech at Portland, Oregon, are no exception."

But in the Philadelphia *Record*, a "progressive" independent, which by its earnest support of Governor Roosevelt must be considered as Democratic, for

the purposes of this campaign, we find the following passage:

"Roosevelt sees public ownership as a powerful club, in the possession of the people, to be used only as a last resort against exploitation by private monopoly.

"This is exactly the *Record's* view. Conservatives have always tried to picture public ownership as something subversive of American principles of government, a product of diseased thinking.

"Roosevelt has the courage to come out and say in effect: 'Yes, I am for public ownership—if there is no other way for a community to get decent, fair service. If a community is exploited, it is its right and duty to resort to public ownership.'

"By this frank handling of a 'delicate' point Roosevelt puts himself in a sound position on the disposition of Muscle Shoals and other water power developments in the United States. He is enabled to demand the public operation of Muscle Shoals as a yardstick by which to measure private power rates."

The editorials appearing in the Hearst papers which are supporting Governor Roosevelt use such general terms in their treatment of the subject that it is difficult to determine whether the editors believe Roosevelt is becoming more conservative or not. The following passage from the *Washington* (D. C.) *Herald* is typical—(The capitalizing of the words is *not* ours.):

"POWER TRUST propagandists have for four years characterized Franklin D. Roosevelt as a 'dangerous man.' In his lucid address on public utility regulation at Portland, Oregon, the New York governor made it perfectly clear for whom he is dangerous and also for whom he is safe.

"The Democratic candidate for the presidency gladly conceded that he is 'DANGEROUS' for the INSULL TYPE OF PROMOTER AND PYRAMIDER, who is out selfishly to exploit the honest investor, on the one hand, and the consumer of power, on the other.

"At the same time, in setting forth his philosophy of power control, Mr. Roosevelt made it apparent that he is SAFER FOR THE PEOPLE—both as INVESTORS and as CONSUMERS—than the present complacent incumbent in the presidency."

LET us turn now to the "financial" press—the organs of Wall Street. After all they should, if anybody, be able to agree as to whether the governor is swinging to the Right or heading straight for Moscow. Here is what the *Financial World* thinks about it:

"Apprehension that a vote for Roosevelt might mean a vote for government ownership and operation of the public utilities should be dispelled by the Democratic presidential nominee's recent frank statement to the press on the subject. Although withholding his views, if any, as to how the so-called 'evils' of the present system are to be eliminated, in enumerating these evils he has merely taken a page from the notebook of constructive critics of the industry and in condemning certain practices he aligns himself with the great body of public utility executives who have long worked to eliminate practices prejudicial to the best interests of the utilities. . . . While Roosevelt's views may not be subscribed to by his more 'progressive' Democratic adherents, the standard bearer speaks for his party and his latest ukase practically removes the 'power trust' issue from the national political arena."

But the *Wall Street Journal* still looks upon the governor with suspicion. It accuses him of lack of candor and clearly implies that it considers him "unsafe." A portion of the *Journal's* editorial follows:

"In his sixth and seventh points Governor Roosevelt returns to his first utility love, Miss Prudent Investment. That haggard belle of yesteryear is sadly in need of an economic beauty treatment. It is doubtful whether her face can be lifted even for the duration of the campaign. Certainly the present level of commodity prices and wages has rendered the reproduction cost theory of investment value anything but the horrendous nightmare that Governor Roosevelt still seeks to make it to the user of utility services. If truth were known, how many utility managers would feel disposed today to fight vigorously in defense of reproduction cost? But 'prudent investment' is a measure of value not only undefined but incapable of definition.

"Outside of his formulated program of 'points,' Governor Roosevelt had much to say of his conception of publicly owned power plants as 'yardsticks' of rates and performance. Here there is just one essential point, that these 'yardsticks' cannot in common honesty be used to enlist public funds and public credit in competitive warfare against a private industry already subject to all the regulatory power that state or nation cares to bring to bear upon it. Does the governor hold it to be sound public policy to inveigle, or force, the taxpayer into a costly war upon him-

self under the guise of providing cheap utility service?"

Now let us turn to a truly independent writer, Walter Lippmann. However one may disagree with his conclusions, Mr. Lippmann, by his literary record, has earned the right to be considered sincere in his appraisals of government and the men who run them or try to run them. Mr. Lippmann obviously favors Governor Roosevelt's position on the power question. He believes that further regulation of utilities is inevitable and that Governor Roosevelt, in basing his proposal on such a premise, has exhibited clear thinking. Mr. Lippmann seems to share the view of the Baltimore *Sun* that conservative opinion has shifted to the governor rather than that the governor has shifted to the Right. This, he holds, is due to the change in price levels mentioned above in the *Wall Street Journal's* editorial. On this point Mr. Lippmann states concerning Governor Roosevelt:

> "Finally, for the purpose of bringing order into the chaotic complication that regulation entails, he adopts as the principle of valuation on which rates should be based the so-called principle of prudent investment. This principle is that the value on which a utility should be allowed to earn dividends is the amount of money actually invested in the property.
>
> "A few years ago, when this principle was first advanced by Mr. Justice Brandeis, it was regarded as confiscatory. Today it has all the appearance of offering the most generous kind of protection to the investor in utility stocks. The reason for this change is in the change of the price level. . . .
>
> "An appreciation of this will almost certainly bring wide support to Governor Roosevelt's proposal and is likely to facilitate its adoption. It will be seen to be a measure which would greatly sustain the credit of the utilities and would protect investors under declining prices, while it radically simplified the problem of rate making and public regulation."

It will be observed that Mr. Lippmann writes in the Republican paper, the *Herald-Tribune*.

—M. M.

EDITORIAL. New York *Herald-Tribune*. September 23, 1932.

EDITORIAL. New York *Sun*. September 23, 1932.

EDITORIAL. Philadelphia *Public Ledger*. September 23, 1932.

EDITORIAL. *Washington* (D. C.) *Post*. September 23, 1932.

EDITORIAL. Baltimore *Sun*. September 23, 1932.

EDITORIAL. New York *Times*. September 23, 1932.

THE BUSINESS OUTLOOK. By D. W. Ellsworth. *The Annalist*. September 23, 1932.

EDITORIAL. Philadelphia *Record*. September 23, 1932.

EDITORIAL. *Washington* (D. C.) *Herald*. September 24, 1932.

EDITORIAL. *Financial World*. August 17, 1932.

EDITORIAL. *Wall Street Journal*. September 23, 1932.

TODAY AND TOMORROW. By Walter Lippmann. New York *Herald-Tribune*. September 23, 1932.

Ten Points upon which to Pin Presidential Candidates on the "Power Issue"

THE month preceding the national presidential election is one of the most amusing and, perhaps, important features of our democracy, such as it is. During this month the two major candidates must stand like school boys at a test quiz and answer any and all questions which anybody who can command sufficient attention cares to ask. If the questions concern a matter of secondary importance, the duty of answering may be delegated to a duly authorized agent of the candidate, but, in any event, the questions must be answered. Failure

to answer means a score for the other side, and a sufficient number of such "scores" is supposed to mean the difference between success and failure at the poles, but it really never does. This quadrennial quizzing of presidential candidates is very uncomfortable for the candidates, but the business is chiefly for the entertainment of the electorate. Few votes are affected by mail-order heckling. It is safe to say that the number of voters who have already made up their minds definitely to ballot for Mr. Hoover and Mr. Roosevelt, respectively, is so large that either or both candidates could quit campaigning immediately without materially affecting the results.

But the traditional campaign must be gone through and, of course, it's fun for us voters to see the candidates squirm. Al Smith, who seems to command more attention during the current campaign than either of the two candidates, started the ball a-rolling by demanding to know how both candidates stood on the bonus question. Just to add to their dismay, the forthright Al threw in a clear-cut statement of his own position on this question with the implied remark, "Tie that, if you can!"

Now comes Judson King with "tests" for the candidates on the subject of power and other utilities. Mr. King's procedure is somewhat unusual in that, after setting forth the tests, he proceeds to outline the positions of the candidates himself. The candidates will undoubtedly define their own positions on the power issue more clearly before election day, but meanwhile we have Mr. King's interesting analysis for what it may be worth. Here are the "ten tests" imposed by Mr. King:

"1. *Public Ownership and Operation:*

"A public interest man will hold any government has as sound a 'right,' to own and operate a power plant as to discharge any other function of sovereignty. Over 2,000 municipalities are doing it.

"A private interest man will assume the sacrosanct privilege of individual initiative to exploit public functions as a private business and decry anything else as un-American and 'Bolshevistic.'

"2. *Long-distance Transmission Lines:*

"A public interest man will know public transmission lines are essential to the success of great public plants and act accordingly.

"A private interest man will hold public competition 'economically unsound.' True, from an engineering standpoint, but not true as a practical matter under present conditions of conflict.

"3. *Federal Regulation of Interstate Holding Companies:*

"A public interest man will demand Federal regulation of interstate holding companies, now all outside state jurisdiction, to protect the investing public. Same for interstate transmission.

"A private interest man will deny this and prate of bureaucracy in Washington.

"4. *Federal Water Power Act:*

"A public interest man will advocate vigorous enforcement and strengthening of the Federal Water Power Act of 1920 and appoint commissioners who will execute it.

"A private interest man will do the exact opposite and ignore the fact that the law has never been properly administered.

"5. *Federal Judges:*

"A public interest man will resent interference by the Federal courts with the proper functioning of state utility commissions.

"A private interest man will acquiesce in this growing usurpation, but inveigh against necessary and proper regulation by the Federal government on the fallacious grounds that it conflicts with state's rights.

"6. *Quasi Judicial Commissions:*

"A public interest man will adhere to the original doctrine that a utility commission is an arm of the legislature, to administer the law and protect the public on its own initiative.

"A private interest man will be silent or hold commissions are, in effect, courts to review causes instigated by the cities or consumers at their own expense.

"7. *Valuation:*

"A public interest man will insist the valuation fixed as a rate base be determined by actual cash prudently invested and not inflated.

"A private interest man will acquiesce in absurd valuations placed by companies on their own properties and tell the people they are only making profits of 7 per cent, when they may be making as high as 60 per cent on actual investment.

"8. *Rates and Successful Regulation:*

"A public interest man will tell the truth

that rates are extortionate; that twenty-five years of regulation has failed in its original purpose.

"A private interest man will dodge discussing rates, or boast they are 'downward' and regulation is a success and rapidly improving.

"9. *Character of Appointments:*

"A public interest man, since administration is 75 per cent of the value of law, will appoint trained officials of integrity, courage, and loyalty to the public.

"A private interest man will pay political debts and appoint officials suggested by private interests.

"10. *General Influence:*

"A public interest man will mould public opinion and afford stimulating leadership to progressive forces fighting to establish, in legislation, in judicial interpretation, and in administration, the principle that the first duty of a public utility is adequate *public service,* at the lowest possible cost.

"A private interest man's influence *per contra* will be utilized everywhere as first aid by financial interests whose primary concern is to collect all the traffic will bear to enhance *speculative profits and private gain.*"

MR. KING then proceeds to review the respective power records of President Hoover and Governor Roosevelt. Applying his ten tests to both candidates he finds President Hoover to be public spirited on only one test—number three, which has to do with holding company regulation. He finds the President silent as to test numbers five and six involving, respectively, Federal court jurisdiction and the proper administrative attitude of regulatory commissioners. On all other seven tests Mr. King finds the President to be partial to private interest. Governor Roosevelt, on the other hand, passes all ten tests with one hundred per cent public spirit.

In the beginning of his bulletin Mr. King has an interesting statement entitled "The Crux of the Power Question," which is signed by thirty-six nationally known economists, educators, lawyers, writers, and others. The list includes Charles A. Beard, Felix Frankfurter, Dr. William E. Mosher, Father John A. Ryan, and George Soule. Here is the text of the statement:

"The power issue, squarely met, means

an abundant supply of cheaper current for industries and business houses, large and small;

substantial reduction in rates and increased use in homes now serviced, the extension of electric service to millions of farm, town and city homes not yet supplied;

reduction in cost of municipal street lighting, pumping, etc., thereby relieving the tax burden;

preservation and planned use of the nation's water power resources, coördinated with flood control, navigation and irrigation.

"This is an issue of enlightened civilization against primitive living.

"We now know regulation as practised is not enough. It permits unsound inflation and high rates and leaves the country confronted by a virtual monopoly too powerful for commission control.

"There are two courses open to us:

1. We may drift in the channels cut for us by interested promoters of private utility companies, whose methods are well known;

2. We may adopt a program of positive action, which means the stiffening of regulation on the basis of prudent investment and fair return; and the extension of public competition, demonstrably the most effective regulatory force yet devised.

"We are at the parting of the ways. The issue is nonpartisan and all candidates for President and Congress must make clear where they stand."

It all sounds rather important, but the more cynical will probably wonder just how many citizens in the coming election will actually cast their votes on the basis of the power issue. For example, a Buffalo citizen claims that he will vote for Hoover because "he's gonna get da beer back," but that his wife will vote for Roosevelt because she thinks "he's gonna get da beer back quicker!" On this voter and his wife the "crux" statement apparently would be unavailing.

—F. X. W.

POWER RECORDS OF HOOVER AND ROOSEVELT. Judson King. Pamphlet. National Popular Government League. Washington, D. C. September, 1932.

The March of Events

A.E.R.A. Changes Name to A.T.A.

THE American Electric Railway Association held a business session, instead of the regular annual convention and exhibition, at the Stevens Hotel in Chicago on September 27th and 28th. By constitutional amendment the name of the association was changed to the American Transit Association. Affiliated associations will henceforth use this new name. They will be known as: American Transit Accountants Association; American Transit Engineering Association, and so forth.

The officers of the American Transit Association for the coming year are as follows: President, Walter A. Draper (President of the Cincinnati Street Railway Company); 1st Vice President, W. E. Wood (Vice President of the Engineers Public Service Company of New York city); 2nd Vice President, F. R. Phillips (President of the Pittsburgh Railways Company); 3rd Vice President, Edward Dana (Executive Vice President and General Manager of the Boston Elevated Railways); Treasurer, F. W. Doolittle (Vice President of the North American Company of New York City).

Arrangements have been completed with the Smithsonian Institution, the government's great national museum in Washington, for the installation of a permanent electric railway exhibit. This will take its place along with the steam railroad and the automotive exhibits already in the institution.

The Westinghouse Electric and Manufacturing Company has suggested that the association's name A.T.A. stand for "All together always." This slogan expresses the spirit of the large representation of transportation men who attended the meeting.

California

Gas Rate Probe Started

RATES charged by the Southern California Gas Company in San Bernardino and in 126 other cities of the state will be investigated by the California Railroad Commission, according to the San Bernardino *Sun*.

It was stated that the railroad commission had issued an order for an investigation after a preliminary survey which, reports said, revolved around the company's appraisals of its property. The commission recently denied an application by the city for an investigation of electric and telephone rates in San Bernardino, but reserved ruling on a similar application for a probe of the gas rates.

Connecticut

Town Not to Be Party in Manchester Rate Fight

SELECTMAN Bowers' motion before the Board of Selectmen of Manchester of September 12th asking that the town present its rate case on street lighting rates against the Manchester Electric Company before the state commission at the same time the Taxpayers' League rate case is heard, was tabled by action of the board, according to the Manchester *Herald*. Mr. Bowers argued that Professor Albert Levitt, counsel for the Taxpayers' League, would not object to the town making an additional case in the hearing before the state commission. The board was of the opinion, in order that an opportunity for informal negotiation might be afforded, however, that the electric company should first be asked for its proposition on electric rates before formal action against it is taken to present a case.

Candidacy of Utility Official Stirs Comment

THE action of George P. Sullivan, an official of the Derby Gas and Electric Company, announcing himself as candidate for mayor of Bridgeport for the Democratic primaries, has caused some comment, according to the Bridgeport *Herald* of September 18th, as to whether the utility might have some under-surface interest in the outcome of the election in view of the fact that there are certain matters to come up in the near future before the mayor's office in which the utility has considerable interest, including some question over rates in Derby and Ansonia.

District of Columbia

Commission's Valuation Practices Questioned

FIVE Washington utility companies jointly moved to seek court review of certain valuation methods employed by the District of Columbia commission. The utilities in an amended petition had already asked the court for specific instructions as to items to be considered in making valuations of the properties of various utilities for rate-making purposes. The utilities' answer, accompanied by a brief of 219 pages, was filed in the District supreme court by the Washington Railway & Electric Company, the Capital Traction Company, the Washington Rapid Transit Company, the Washington Gas Light Company, and the Georgetown Gas Light Company. The utilities deny the claim of the commission that instructions by the court as to the proper elements to be considered in rate-making valuation will result in the saving of great sums of money or will tend toward a more just or reasonable performance of the duties of the commission or will have any such effect. The several instructions suggested by the commission, it is claimed, are incorrect, ambiguous, misleading, and contrary to law and should be refused by the court.

Periodical Utility Reports Discontinued

THE commission decided to discontinue its former practice requiring utilities in the city of Washington to make four monthly and one daily report of certain operations on the ground that such reports are useless, according to the Washington *Times*. Action was taken after the commission had made a survey of all reports required of such companies. A monthly accident report, which is a summary of daily accidents; a daily passenger street car and bus mileage report; a monthly report of renewals and track repairs; a monthly report of equipment changes; and the electric company's revised schedule report, are among the reports which will no longer be required. It was decided that the reports to be discontinued were mere repetitions of statistics contained in other reports and the financial saving as well as lessening the work of the companies' clerical forces would result.

Florida

Tampa's Troubles with Rate Experts

THE city of Tampa continues to have difficulty in the matter of hiring rate experts for two utility controversies in which it is now involved.

On September 13th Mayor Chancey was prohibited by the board of aldermen from hiring an expert to assist in drawing a new public lighting contract with the Tampa Electric Company until he fails to get lower rates through friendly negotiations. The board's action was a reversal of its own action taken a week previous in authorizing the employment of such an expert. Reconsideration of the matter resulted from a resolution prepared by a special lighting committee. The committee insisted that the board's first action was ill-advised and that the electric company had not been given a chance to make a voluntary proposal to the city.

Meanwhile Circuit Judge Parks refused to hold up the Virginia Park water injunction suit while the city of Tampa could make an expert survey of its water system. The judge claimed that the city had delayed until the morning motion was made to authorize the employment of an expert, according to the Tampa *Tribune*. The court pointed out that the case had been at issue long enough for the city to have obtained sufficient evidence, and that after the plaintiff had prepared his case with diligence the matter should not be postponed in order to give the city time to go out in search of evidence. It was agreed that argument would not be held until September 27th.

Georgia

Service Charge to Be Considered

CHAIRMAN James A. Perry, of the Georgia Public Service Commission, announced on September 18th that he will recommend that the commission hold hearings at principal cities throughout the state on the question of whether domestic consumers of electricity

should be compelled to pay a monthly service charge of $1 in addition to a charge for actual use of current. The question of the fairness of the service charge to users of electricity was brought out in the recent campaign by Jule W. Felton.

According to the Atlanta *Constitution*, Mr. Felton, a candidate for renomination as a member of the public service commission, insisted that the service charge was unfair and promised that, if renominated, he would cause an investigation to be conducted by the commission looking into the question of the $1 service charge. Mr. Perry's statement was issued independently of charges made by Commissioner Felton.

Political Fight for Commission Places

GRAVE charges of subterfuge in utilities rate making made the political race for the two places on the Georgia Public Service Commission which are open in the coming election more interesting than the contest for ten other minor state positions. More than forty candidates were seeking the nomination for eleven contested offices other than governor and senator. Mr. Jule W. Felton, incumbent seeking reëlection, campaigned, according to the Atlanta *American*, on the slogan "Shall Georgia's public service commission be composed of a public-minded personnel or a utilities-minded one?" Charges of deceitful practices in rate making were hurled by Guy O. Stone of Glenwood, seeking the place now occupied by Albert J. Woodruff.

Stone charged that when the service charge was applied in 1928, on the theory that rates would be lowered, the cost of electric current to each consumer increased instead of diminished, as the public had been led to believe. Stone also said that existing rates were fixed at the peak of the Republican boom when valuations on utilities properties were high. He demanded a revaluation of said properties to protect the public from paying high tribute to water stock and idle capital.

Besides the candidates mentioned, Mrs. Calvin W. Parker, Hunter A. Manning, J. A. Reed, and Walter Perkins are seeking election as commissioners. Success at the Democratic primaries amounts to election here.

Illinois

Chicago Gas Rate Fight Nears Close

THE fight of the city of Chicago for lower rates for gas consumers neared its completion before the Illinois Commerce Commission. Mr. F. P. Fisher, consulting engineer, took the stand on September 16th to summarize far-reaching data which, he contended, showed the present experimental rates of the Peoples Gas Light and Coke Company were 20 to 30 per cent too high. The hearing which was held before Assistant Commissioner Robert H. Farrell is on a petition of the company to make permanent the temporary experimental rates which had been in effect since last October. Fisher's testimony is on the basis of a 100-page report on the gas industry history in many American cities in connection with an analysis of the Consumers Gas Company's own figures.

Mr. Ralph E. Davis, also testifying for the city, claimed that the gas company rates would bring a return on its investment of 10 per cent. The company, in presenting its case, estimated the return at 6 to 7 per cent on the same base.

Indiana

Commissioner McCardle to Retire

JOHN W. McCardle, chairman of the Indiana Public Service Commission and member of that commission for nearly sixteen years, has announced that he will retire from office when his present term expires on May 1, 1933. On that date Mr. McCardle will have completed four terms, a total of sixteen years, as one of the chief arbiters in the solution of public utility problems in that state. He has been the chairman of the Indiana commission for ten of the fifteen years he has been in office.

In declaring that he will not be a candidate for reappointment, Mr. McCardle said that he was going back to the farm. He is the owner of several farms but plans to retain his home in Indianapolis. Mr. McCardle originally came from Indianapolis.

Kansas

State Suits against Cities Service Restrained

A TEMPORARY order restraining Governor Woodring and Attorney General Roland Boynton from instituting receivership, ouster, or charter forfeiture proceedings against ten Cities Service Company subsidiary gas distributing concerns operating in Kansas was signed on September 17th by Judge George A. Kline of Shawnee district court.

It was obtained by Cities Service attorneys less than twenty-four hours after Governor Woodring had announced that he was directing Mr. Boynton to file receivership proceedings against the ten companies on the ground that they had violated state corporation laws. The companies alleged that it was the intention of the state officials to "intimidate" the former into acceptance of orders issued by the Kansas commission directing the companies to make sweeping reductions in gas rates. The injunction suit was filed in the name of Pittsburgh Gas Company and on behalf of nine other corporations. A date for hearing will be set later. Robert D. Garver, counsel for Cities Service, found out that Governor Woodring had been involved in an attempt for over fifteen months to obtain gas rate reductions of 25 per cent in pipe-line rates, threatening to destroy the properties of the companies if they refused to accede to his demands. As to the receivership suits Mr. Garver said that the facts are that the companies concerned have never defaulted or failed in the payment of any obligation and could not, therefore, be considered insolvent. He intimated that the governor's action was prompted by his current candidacy for reëlection to the governorship of the state.

Kentucky

Gas and Electric Rate Cuts Asked for Louisville

A SHORT-TERM franchise, lower gas and electric rates, and mixed gas only when it becomes necessary were urged upon the revision committee of the board of aldermen of Louisville in a hearing brought on September 13th.

Judge Reuben Ruthenburg, spokesman for the Taxpayers' League and the Council of Civic Clubs, suggested a rate setup which he said would return to the Louisville Gas and Electric Company 7 per cent on a investment of $52,000,000. The civic organizations requested a 4-cent electric rate on the first 30 kilowatt hours and 3 cents for all electricity used in excess of that amount, both residential and commercial.

A subsequent dispatch from the Louisville *Times* of September 20th states that rate experts for the city and for the Louisville Gas & Electric Company had commenced to figure the effect which rates proposed by Judge Ruthenburg would have on the company's gross revenues as compared with 1931 and eight months of 1932. Mayor Harrison, in hearing arguments in favor of the Taxpayers' League, observed that the company had to earn 2½ to 3 times its interest charges to make its securities triple A investments. He quoted from Governor Roosevelt's speeches to the effect that an emasculation of a railroad, bank, or utility of its ability to earn its interest charges would result in serious consequences.

Paducah Asks Lower Power and Phone Rates

A FIGHT by the Paducah Board of Commissioners to secure reductions in rates now in effect on telephone, light, power, and gas service was brought into the open September 10th in a statement by Mayor E. G. Scott, in which he outlined the board's position in the controversy and the reasons the board has advanced in demanding the reductions.

Both the Kentucky Utilities Company and the Southern Bell Telephone & Telegraph Company have been asked to lower the rates they charge the Paducah public for service. The Kentucky Utilities Company had not at that time made a definite answer and the telephone company had "absolutely refused" to accede to the board's demands, according to Mayor Scott. The mayor declared that the public was entitled to reductions, especially in telephone rates, because of deflation in all types of capital and business as well as the decline in price levels.

Massachusetts

Worcester Hires Electric Expert

SAMUEL H. Mildram of Boston, well-known public utilities investigator, has been retained by Mayor Mahoney to study domestic, commercial, traffic lights, and power rates of the Worcester Electric Light Company. He will report by December 1, 1932, and will be paid $900 for his work.

The mayor is interested in lowering the charge for traffic lights, which at present is $10 per year per unit. He has hired the expert after the city council rejected an order calling for expert study. He said $700 of Mr. Mildram's fee was savings he had effected in the purchase of a new official car; the difference to be paid from general funds.

Town Puzzled As to What to Do with Its Money

THERE is considerable speculation in municipal circles in Amesbury, Massachusetts, over what will happen when the water bonds are paid in full, which will be in the year 1936, according to the Newburyport (Mass.) *News & Herald*. Under the present arrangement, water commissioners have a balance of $10,000 a year and the question has been raised as to whether the amount shall hereafter be applied to a reduction in water rates or become a municipal credit and be applied in such a manner as to reduce taxes.

Minnesota

Power Rate Reduction Sought in St. Paul

AN ordinance providing for a reduction of more than 10 per cent in electric rates charged in St. Paul will shortly be introduced before the city council, according to the city commissioner of public utilities, Clyde R. May. The proposed ordinance will use as a rate structure certain valuation figures now in possession of the public utilities department. It is proposed to have the ordinance become effective January 1, 1933, at the expiration of the present one-year permit under which the Northern States Power Company is operating in lieu of a franchise.

Mr. May also announced that authority would be asked for an appropriation of $50,000 in the 1933 municipal budget to finance a valuation of the properties of the Northern States Power Company. Prior to Mr. May's statement a petition of the Electric, Gas & Steam Consumers League passed the city council for a fund for valuation of said properties in an amount of $80,000. The petition also suggested that plans, at an estimated cost of $50,000, be prepared which would show the tentative cost of municipal electric, steam, and gas plants.

Missouri

Springfield Seeks Power and Water Rate Reduction

MAYOR Harry D. Durst of the city council of Springfield will seek expert advice before any answer is given to the Springfield Gas and Electric Company concerning its proposed new commercial rate schedule, according to the Springfield *Leader*. The council has received an offer from the company to make reductions totaling $52,000 a year in commercial lighting rates and to concede the city $6,000 on a street lighting bill which the city now owes.

City council members expressed bewilderment at the new schedule but looked forward to additional information which W. H. Swift, Jr., manager of the company, agreed to furnish. The company's offer, which Mr. Swift said would be its final proposition to the city, was submitted at a conference with the council and includes a commercial lighting schedule which makes the "demand," or total connected load, the basis upon which the charge is made. Mr. M. D. Lightfoot, president of the Taxpayers' Conservation League, frequently challenged statements of utility officials and engaged in heated clashes.

Meanwhile another dispatch from the Springfield *Leader* reveals a threat by the Springfield City Water Company to have all of its property assessed at the source of its water supply where it would escape taxation by the city and the Springfield school district.

The company's officials had previously re-

fused to consider the city council's demand for reduction of minimum water rates and for fire hydrant rentals. The council thereupon sought to retaliate by placing a license tax upon the company's gross income, whereupon the water company's representative suggested that the company would appeal to the state supreme court to have its entire property holdings assessed outside the city of Springfield. The possibility of having the water company assessed at the source of its water supply is based upon a similar situation which arose in Sedalia, Missouri, as decided by the state supreme court.

New Jersey

Governor Favors Statewide Rate Probe

GOVERNOR Moore has given approval to the resolution passed by the State Federation of Labor at its convention in Newark on September 7th asking for an investigation of public utility rates with a view to lowering telephone tolls in New Jersey. The resolution also points to an investigation of electric light rates.

Commenting on the resolution the governor said that he had not yet received the request, but that he was disposed to grant it. He added, however, that the cost probably would be considerable. If ordered, the investigation will be under the direction of the board of public utility commissioners.

According to the Hackensack *Record*, the governor's approval is not necessary to insure a probe but is expected to hasten action by the public utilities commission which has full power to make an inquiry into the rates to decide whether or not they should be lowered.

Numerous Cities and Towns Seek Utility Rate Cut

AN avalanche of announced proceedings and proposed proceedings by municipalities looking towards the reduction of utility rate charges continue to accumulate, according to various press dispatches in New Jersey. It was announced on September 17th that New Brunswick would enter a statewide fight for reduction of public utility rates for gas, street lighting, and other electric service furnished by the Public Service Electric and Gas Company, according to a statement by Mayor John J. Morrison published in the New Brunswick *Times*. The movement in New Brunswick is sponsored by the State League of Municipalities, of which the city is a member. In Riverton, New Jersey, Mayor Killam E. Bennett, after calling attention to his annual message to the council dealing with the subject of water, electric light, and gas rates to the municipality and to private consumers, expressed the opinion that a committee should be appointed to investigate thoroughly the matter and report back to the council. The mayor expressed the belief that the rates charged for gas and electric current in Riverton were excessive in view of the reductions in many other commodities. The council authorized the committee to make a thorough investigation and report back its recommendations. The mayor was also authorized to attend the meeting of the League of Municipalities to be held at Asbury Park on October 6th and 7th.

The borough of Little Ferry and the borough of Garwood are two other municipalities which have recently passed resolutions seeking gas, water, and electric rate reductions.

The North Camden Civic Association continues its effort to obtain lower electric and gas rates, notwithstanding the refusal of the Public Service Company to reduce residential electric rates in Trenton, according to a dispatch from the Camden *Post* of September 17th.

It is reported that the city council of Passaic and the West Orange Town Commission may join the statewide fight which is being sponsored by the State League of Municipalities.

Meanwhile Edmund W. Wakelee, vice president of the Public Service Electric and Gas Company, replying to George W. Page, city commissioner of Trenton, who demanded reduced residential electric rates, declared that his company did not regard the present time as propitious for cutting rates. Mr. Wakelee contended that the rates in force in Trenton are fair and reasonable and maintains that Mr. Page's recent comparison of Trenton rates with those of 178 other cities was based on a faulty calculation. Engineers and rate specialists, according to Mr. Wakelee, are constantly at work on the rate problem in New Jersey and further adjustments will be made as soon as practicable.

Subsequent to Mr. Wakelee's reply the mayor and council of Fort Lee, New Jersey, and the mayor and council of Bergenfield, went on record as favoring a reduction of utility rates generally.

New York

Groups in New York City Area Seek Rate Cut

As the first step in a campaign for lower light rates, the Greater New York Consumers' League, composed of representatives of civic organizations throughout the city, will circulate 500,000 petitions for presentation to the public service commission, it was announced on September 21st by Borough President George U. Harvey soon after he had accepted the permanent presidency of the league. According to the New York *Times* Mr. Harvey plans to appeal to Mayor McKee for city aid in distributing the petition.

Th. league's action was subsequent to a luncheon held by the Broadway Chamber of Commerce at Dante's Restaurant, Brooklyn, where David Chassler, president of the chamber, announced that an intensive effort to obtain at least a 10 per cent decrease in electric light rates will be made by the chamber. Mr. Michael J. Rosalsky, also of the chamber, pointed out that the electric companies have decreased the pay of their employees, cut expenses to the bone, while increasing electric consumption, but have not reduced their rates, and that it was high time civic organizations of the various boroughs coördinated their efforts toward obtaining an immediate cut in rates of at least 10 per cent.

Louis Waldman, socialist candidate for governor of New York, speaking at a ratification meeting of the Queens County Socialist candidates at Woodside, September 12th, attacked privately owned gas and public utility companies in general, and the Brooklyn Union Gas Company in particular, on the ground that they were increasing their earnings at the expense of small consumers during the "bitterest depression of our economic history," according to a report by the New York *Sun*.

Meanwhile a rate reduction providing for a saving of $160,000 annually for the 100,000 gas consumers served by the Kings County Lighting Company was offered by the company on September 21st at a hearing before the public service commission in the commission's office. It was accepted by the representatives of the complainants and by Corporation Counsel Hilly, representing the city of New York. The commission will consider the offer and is expected to hand down a ruling in the near future.

Speaking for the New York Edison interests, Mr. Floyd L. Carlisle, chairman of the New York Edison and Consolidated Gas companies and the Niagara-Hudson Power Corporation, pointed out at a dinner given at the Waldorf-Astoria on September 12th, celebrating the fiftieth anniversary of Edison service, that New York power utilities believe that their greatest danger is in over-regulation or the "substitution of the business judgment of the commissioners for the business judgment of boards of directors." Mr. Carlisle said that sane regulation by the state is preferable to making rates with municipalities by contract, which is really what preceded our present system. He added that it is the policy of these companies to coöperate openly and with great frankness with the state regulatory commission in the performance of the latter's duties.

North Carolina

Fair Rate Body Starts Statewide Canvass

Under the direction of Clarence E. Lundy, Raleigh real estate man, the canvass for members in the Fair Utility Rate Association got under way in Raleigh, North Carolina, on September 19th with ten canvassers from the ranks of the unemployed calling upon users of public utility services and extending to them the privilege of signing the association's membership roll. Contributions will also be asked, although they are not required for membership, according to State Organizer B. E. Barksdale. The organization incorporated under the laws of North Carolina as a nonprofit organization was launched in Charlotte during the early part of August and is said to have assembled about 6,000 members there. It is not coöperating with the state corporation commission, at present engaged in utility rate investigations, but has promised that it will receive rate reductions. According to the Raleigh *News and Observer* Mr. Barksdale has plans for extending the organization throughout the state.

Commission Hires Experts

The corporation commission on September 12th announced that it had engaged the services of a widely known consulting

engineer, Charles E. Waddell of Asheville, for its investigation of public utility rates, which already has progressed through conferences with the four major electric power distributors in the state. The commission was expected to issue an order for lower electric rates to become effective on October 1st, according to an oral statement by Commissioner Stanley Winborne. Upon completion of the electric cases, Commissioner Winborne said that gas and telephone rate reductions will be considered.

Ohio

City to Appeal from Commission Ruling

THE city of Cleveland has appealed to the state supreme court from a ruling of the public utilities commission to the effect that the latter has no jurisdiction to order an emergency rate reduction by the East Ohio Gas Company, according to a dispatch to the *United States Daily* of September 22nd. The commission by a vote of 2 to 1 dismissed a motion by the city for the reduction of rates now being collected under bond while proceedings to determine reasonable rates are pending before the commission on appeal from an ordinance of the city fixing lower rates.

A temporary schedule of rates was sought by the city on the plea that the people of Cleveland are in financial straits and that consumers of gas should not be required to continue to pay the present rates. In a minority opinion, filed subsequent to the dismissal order adopted by the majority, Commissioner Frank W. Geiger declared that the commission had the right to judge whether an emergency rate exists and temporarily to alter any of the existing rates accordingly.

Meantime in the city of Akron, Ohio, which also has a gas rate case pending before the Ohio commission, Mayor C. Nelson Sparks and Director of Law G. H. Doolittle claimed to see a loophole through which the city of Akron might obtain advantage of an emergency reduction, according to the Akron *Beacon Journal* of September 15th. Although the commission had already decided that it was without jurisdiction to grant an emergency reduction in the case of the city of Cleveland against the East Ohio Gas Company and had handed down a similar decision in the appeal of the city of Columbus for lower rates from the Columbus Gas and Fuel Company, the Akron officials claimed that a different situation prevailed in the latter city. It appeared that the utilities commission based its ruling in the Cleveland case upon a section of the general code forbidding it to act on the city's application because the city had already established a lower rate which is the subject of the present litigation. In Akron, it was pointed out, no such situation prevails since rates there are franchise rates agreed to by the East Ohio Gas Company.

Pennsylvania

Governor Fills Two Vacancies on Commission

GOVERNOR Pinchot on September 12th named P. S. Stahlnecker, his private secretary, and Dr. Clyde L. King, secretary of revenue, for vacancies on the state public service commission left by the recent resignations of the late Chairman W. D. B. Ainey and Emerson Collins, respectively. Governor Pinchot praised the capability of both his appointees and expressed the hope that the senate would hasten to confirm the appointments. Commissioners George Woodruff and Frederick P. Gruenberg, also named to the commission by Governor Pinchot, have not as yet been confirmed by the senate. According to a report in the Philadelphia *Record* the state organization leaders say the same attitude might be taken toward Commissioners Stahlnecker and King. It is thought that the forthcoming senate investigation of the relation between the commission and the utilities will play a big part in senate's future action in the matter.

In the meantime Judge Robert S. Gawthrop of the state superior court refused the senate's request that he be its counsel in the forthcoming investigation. Judge Gawthrop pointed out that if he had accepted he would be forced to retire from the bench when his term expires January 1st, thus forfeiting his right to a judge's pension.

Rate Reductions Asked in Bethlehem

STEPS toward securing a reduction in the rates of utilities were taken at the weekly meeting of Bethlehem city council on September 13th, when Councilman Thomas W. Scott and Charles Groman presented a resolution that "the proper officials of the city be authorized and directed to appeal to the public service commission of the commonwealth of Pennsylvania by entering complaint or by such procedure as in their judgment be advisable to secure a reduction in the rate schedule charging the consumers of the city of Bethlehem for the use of electric power and light and gas furnished by the Pennsylvania Power & Light Company and the Allentown-Bethlehem Gas Company." The resolution was unanimously adopted, and another authorizing the city officials to bring the complaint against the practice of the company in charging an alleged excessive fee for reconnecting service after temporary disconnection was presented.

Tennessee

Municipal Officials to Hold Phone Rate Parley

MAYOR Overton announced on September 16th that he has asked mayors of Tennessee's larger cities to meet him in Memphis at an early date and discuss advisability of filing a united petition with the state commission for a reduction in telephone rates all over the state. Mayors of Knoxville, Chattanooga, Nashville, and Jackson were to be invited to meet some time within thirty days and study information regarding the telephone company's income and profits as well as rates, according to Mayor Overton's statement which was published in the Memphis *Evening Appeal*. The conference, it is said, will be held in Memphis unless a majority of the other mayors want it held in Nashville. Telephone rates in cities the size of Memphis all over the United States are being listed for comparison with Tennessee's rate.

Competitive Franchise Awarded

The city commission of Johnson City September 15th granted a 10-year franchise to Mr. R. H. Nichols, a Nashville banker, and his associates, to furnish power and light to Johnson City. Mayor Ben B. Snipes said that the new franchise would save power and light users in that community a minimum of 10 per cent over the present rates or about $30,000 annually. The new company was allowed twenty-four months in which to post a bond. The city at present and for a number of years has been served with electricity by the Tennessee Eastern Electric Company, a subsidiary of the Cities Service corporation. City officials said that the franchise of the Tennessee Eastern Company had expired several years ago. Mr. D. R. Shearer, general manager for the Tennessee Eastern Electric Company, said that his company had no statement to make at the time.

Virginia

Municipal Rate Fight Urged in Norfolk

The city council of Norfolk has received letters from the Virginia League of Municipalities asking if Norfolk would join with other cities in defraying the cost of an investigation of utility rates in the state. At a meeting of the council held on September 20th Mr. T. Ralph Jones appeared to urge that Norfolk join the movement for a proposed statewide investigation of utility rates.

Meanwhile it was learned by the Richmond *Times-Dispatch* that the state corporation commission had been requested to make a through survey of Winchester rates with a view to ordering lower rates for gas and electricity. The request, which was in the form of a resolution, adopted by the Winchester city council on motion of Councilman J. H. Henry, pointed out that "prices of commodities generally have been greatly reduced in recent years."

The Latest Utility Rulings

Cities Service Wins Preliminary Restraining Order against Governor Woodring

THE Kansas commission and the attorney general of that state have been restrained by a temporary order issued by United States Judge O. L. Phillips of the tenth United States circuit court at Denver from enforcing an order issued recently by the Kansas commission which would reduce rates of the Cities Service Gas Company and its subsidiaries.

Acting on the orders of Governor Woodring, Attorney General Roland Boynton had prepared suits to enjoin the Cities Service Gas Company and nine subsidiaries from going into court to enjoin the enforcement of the commission's order, issued August 31st and effective September 1st, according to a dispatch from Topeka, Kansas, on September 24th to the *United States Daily*. The governor stated that the Cities Service companies were trying by legal means to delay the carrying out of the commission's order reducing the city-gate rate charged to subsidiary companies from 39.5 per thousand cubic feet to 30 cents. Attorney General Boynton stated that the Federal restraining order also prevents the institution of these suits, "the purpose of which was to intimidate and coerce" Cities Service distributing companies into abiding by the commission's orders, and to take the conduct of their business out of the hands of the officers of the Cities Service companies.

Attorneys for the Cities Service companies had already obtained a preliminary restraining order from a circuit county court in Shawnee county on September 7th. Judge Phillips, in granting the Federal temporary restraining order, set the application down for a hearing on September 24th before a Federal three-judge court to be assembled in Topeka. Judge George T. McDermott of the circuit court and Federal District Judge R. J. Hopkins will sit with Judge Phillips at the hearings. In addition to the rate reduction orders, an issue in the proceedings will be the commission's findings that 30 cents a thousand cubic feet is a reasonable price to be paid by the distributing companies to an affiliated pipe-line concern (Cities Service Gas Company) and that a management fee of 1¾ per cent of their gross revenue paid to Henry L. Doherty & Company should be disallowed in arriving at a rate base. It is the position of the distributing companies that the Kansas commission is without authority to fix a rate for the pipe-line company. *Cities Service Gas Co. v. Kansas Public Service Commission et al.*

Telephone Rates Reduced in the District of Columbia

THE Public Utilities Commission of the District of Columbia has ordered a 10 per cent cut in all telephone bills in the District for service to be furnished after September 30, 1932, except for private branch exchange service where a switchboard is supplied to subscribers. Apartment houses, business concerns, and others, where more than one telephone line is in use, are usually equipped with these private branch exchanges. The rate reduction does not apply to them, but only to persons with private telephones. The cut

was ordered by the commission as a result of extended public hearings which started June 15, 1932. Although the Chesapeake & Potomac Telephone Company withheld comment pending a study of the order, it is believed certain the company will appeal to the courts to restrain the order. The commission found the rate base on which the company is entitled to earn a reasonable return to be a maximum of $29,400,000 and that under present conditions a rate of 6 per cent return is reasonable. The rates ordered into effect are calculated to pay this amount of return without the necessity of discharging any employees or reducing their wages. The rate base fixed by the commission is about $7,000,000 less than that claimed by the company. One of the main contentions was a claim by the company of $4,000,000 for "going concern value." The commission stated that it had included an amount which it believed reasonable for this item, but did not state what the amount was. The commission also found that 1½ per cent of certain items of telephone operating revenue paid by the local company to its parent, the American Telephone and Telegraph Company, under a license and service contract should be charged 60 per cent to operating expenses and 40 per cent to fixed capital.

In the matter of accruing reserves for pensions and retirement pay, the commission questioned whether the accrual at the rate for 1931 was appropriate and suggested that the amount be decreased and that the annual accrual need not be more than $100,000. The opinion also concluded that the company's accruals for depreciation were too great. It was observed that since 1920 the company had transferred approximately $3,510,396 to surplus at the average of $292,000 per year. The commission said that it would be no hardship if, for a time at least, materially lesser amounts were available for this surplus.

On the heels of the order directing the 10 per cent cut in telephone rates, the commission on September 17th took another step which would make available between $300,000 and $350,000 for a further reduction. This was done by means of an order directing the Chesapeake & Potomac Telephone Company to credit its depreciation reserve with 5 per cent interest a year computed monthly. The reserve, as now existing, is between $6,000,000 and $7,000,000, and was built up by monthly accruals from operating expenses. The 5 per cent interest will be deducted from the monthly accruals. The commission's order will affect only residential telephone subscribers residing within the District of Columbia, since the commission's jurisdiction ends at the boundaries of Maryland and Virginia, although the company serves a number of subscribers in suburban communities in both Maryland and Virginia. *Re Chesapeake & Potomac Telephone Co.*

Wisconsin Phone Rate Increase Denied

THE Wisconsin Public Service Commission has dismissed an application of the Wisconsin Telephone Company for an increase of 25 per cent in its rates in Madison, Wisconsin. It was directly as a result of this application which was filed in 1931 that the commission undertook its statewide investigation of telephone rates, which resulted in its recent interlocutory order fixing emergency telephone rates, pending a forthcoming final order on statewide rates. The recent action of the commission has the effect of dismissing the original application for the rate increase in the city of Madison alone.

The commission's opinion stated that the officers of the telephone company had misled the Wisconsin Railroad Commission, as the latter was formerly organized, by representations that resulted in rate increases in more than 30

cities. The opinion stated that the "misleading character" of the representations made by the president of the telephone company to the former commission were brought to light by members of the present commission's accounting staff engaged in a statewide investigation of telephone rates.

A statement issued by the commission said that the principal instance of misleading testimony by the company's president was described in the commission's order as constituting a claimed expense for depreciation on three classes of property when the records of the company showed that these expense items had already been included under other accounts in the company's books, resulting in what the present commission described as a "pyramiding of depreciation provision."

The company's failure to disclose to the former railroad commission, and to its successor, the present commission, that in 1921 it had made and put into effect a study of depreciation which produced lower figures than used in the testimony of 1924 was also the subject of criticism in the commission's order. The opinion stated that the existence of the 1921 depreciation study and also an exhaustive study made effective in 1931 were only discovered recently by the commission's accounting staff.

Another instance recited in the order as evidencing a failure to make a full and frank showing to the commission related to a change in definition of "drop wire" and other equipment, which was said by the commission to affect depreciation expense and, therefore, subscribers' rates. The opinion declared that the commission never was apprised of this change in definition by the company. It was pointed out that the former commission had indicated full reliance upon the records and representations made by witnesses of the company.

The commission's opinion concluded that the executives of a public utility owe a duty to the regulatory commission to make an honest and complete disclosure of all pertinent facts regarding its operations, that this applies with equal force where a utility fails to disclose or conceal pertinent facts which should be put into the hands of the commission to guide it in reaching its conclusion. The commission refused to say that the failure of the company to reveal its depreciation studies and other accounting evidence was the result of an attempt at deliberate suppression, but stated:

> "We have concluded not to dismiss this proceeding upon the ground that the company deliberately misled the commission. Such a charge is a serious one, and would require us to dismiss this application upon what would amount to fraud. We do not find that there was intentional misleading of the commission or intentional or deliberate suppression of relevant facts.
>
> "Nevertheless, the situation disclosed in the record and in this opinion makes it incumbent upon the commission to dismiss this application for an increase in rates. The burden of proof to justify the reasonableness of the proposed rates rests upon the Wisconsin Telephone Company. That burden of proof extends to every essential of the company's required showing. As to one of those essentials the company has clearly failed to offer satisfactory or convincing proof. The burden of proof not having been sustained the commission must dismiss the application."

Re Wisconsin Telephone Co.

Utility Investigation Opens in Indiana

THE Indiana commission has formally ordered an investigation into the relations between the Gary Heat, Light & Water Company, the Gary Electric & Gas Company, and the Midland United Company. The first named is an operating utility and it is controlled by the latter two. The commission order stated that in August it had authorized the Gary Electric & Gas Company to issue $8,000,000 in bonds due in three years to be sold in Indiana.

In this proceeding its investigation disclosed that the operating utility was involved in the bond issue of the petitioner which was a Delaware corporation. The commission became convinced that there was some agreement between the operating utility and the holding companies as to restrictions to be placed upon the issuance of securities by the operating company in the furtherance of financial plans of the holding company.

The commission's order conceded that it had no control over the financial manipulation of a nonresident corporation not operating in Indiana but it felt that its jurisdiction over the operations of the Indiana utility warranted its investigation of the entire relations of the Gary Heat, Light & Water Company, the Midland United Company, and the Gary Electric & Gas Company, including any agreements entered into between such corporations relative to the pledging of property or contracts restricting the sale of securities. *Re Gary Heat, Light & Water Co.*

Gas Utility May Use Natural Supply without Special Authority

A PENNSYLVANIA corporation legally authorized to engage in the rendition of gas service has a legal right to supply natural gas in addition to its manufactured product, or a mixture of both, without obtaining the special permission of the Pennsylvania Public Service Commission, according to a ruling just handed down by that body, dismissing a complaint against the action of the Pennsylvania Power & Light Company in using a natural gas supply. The complaint contended that the utility was subject to an implied condition under the Public Service Company Law which would require the approval of the commission as a prerequisite to such an operating practice.

The commission's opinion pointed out that under § 2 of the Public Service Company Law the utility must have the approval of the commission before its incorporation, and also the commission's approval for the beginning of the exercise of the powers and rights conferred by its own charter. Then again under § 3 (a), the law provides that, as to those public service companies already existing, the commission shall have the authority to require its approval as a prerequisite to the renewal of any such utilities' charters or the obtaining of additional rights affecting or supplementing such charters.

In other words, the commission, after looking over the only two sections of the Public Service Company Law which could have any bearing upon the contention made by the complainant, found that the legislature had not placed into the hands of the commission authority to restrict a gas utility from using a different type of supply as long as the service rendered was adequate and the rates charged reasonable. It was observed that the commission retained its jurisdiction in all such cases to determine the reasonableness of the rates charged and the adequacy of the service rendered as well as to regulate territorial competition. *Balliet v. Pennsylvania Power & Light Co.*

Certificated Carrier May Not Cut Rates to Meet Unregulated Competition

A CERTIFICATED motor carrier may not establish lower rates in order to meet competition of unregulated or so-called "wildcat" motor carriers, according to a recent order of the California commission reached by a vote of three to two, refusing the proposal of the Pacific Motor Transport Company,